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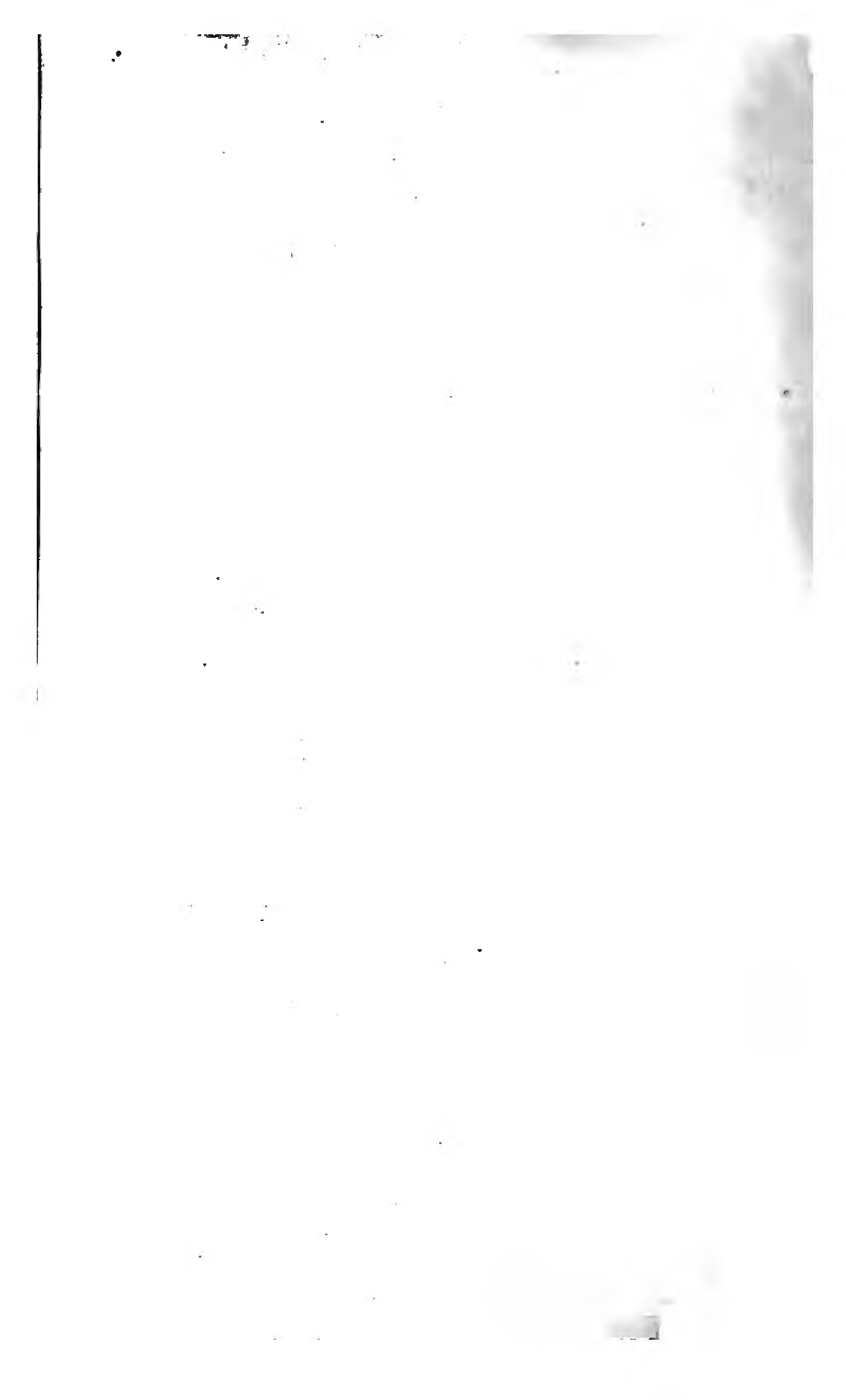
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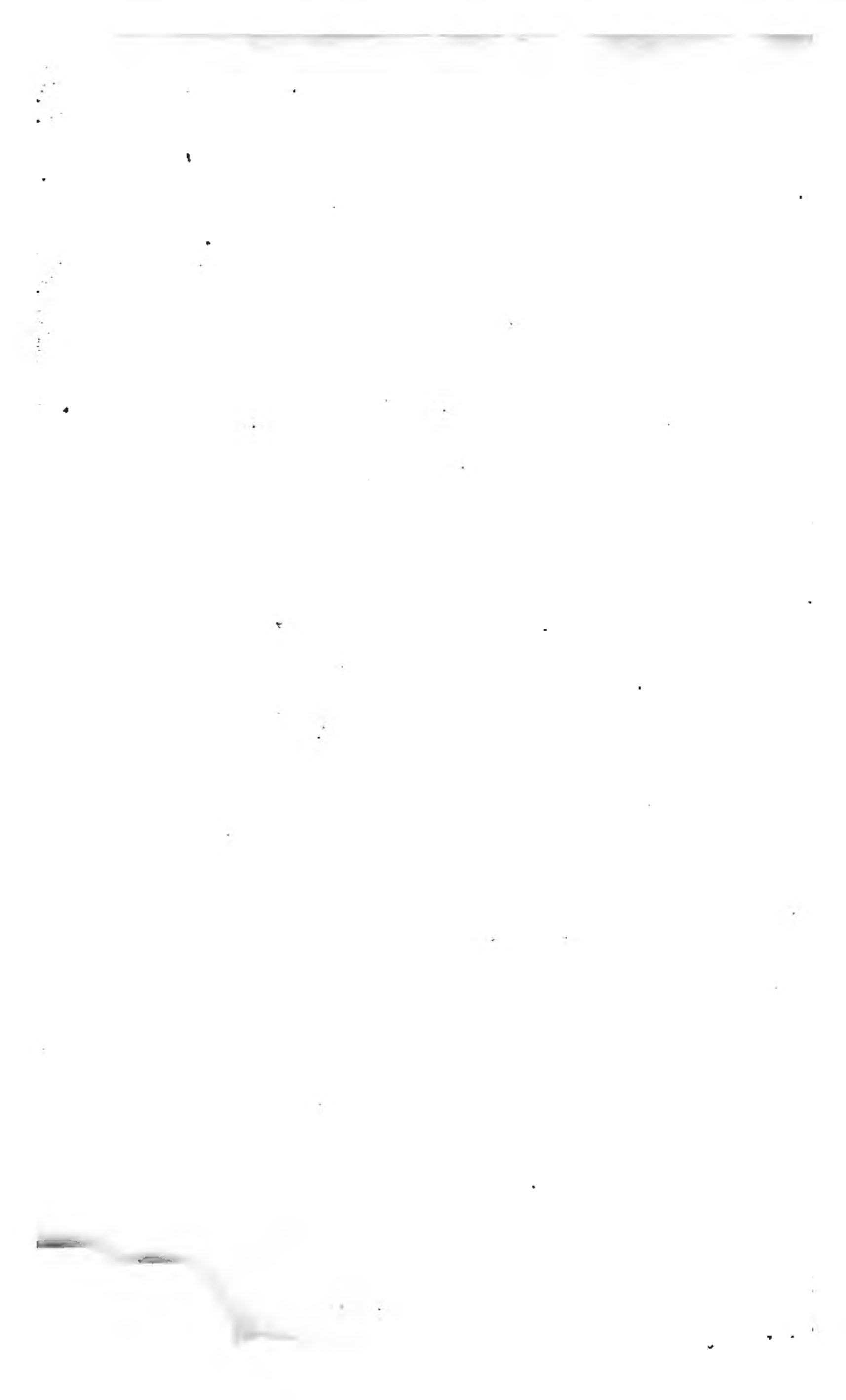




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**PRACTICAL TREATISE**

*Almon* ON *Harriet*

**THE CRIMINAL LAW;**

**VOL. III.**

**CONTAINING**

**PRECEDENTS OF INDICTMENTS,**

**&c.**

**WITH COMPREHENSIVE NOTES ON EACH PARTICULAR OFFENCE,  
THE PROCESS, INDICTMENT, PLEA, DEFENCE, EVIDENCE, TRIAL,  
VERDICT, JUDGMENT, AND PUNISHMENT.**

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**William Brown, Printer.**

**1819.**

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## CHAPTER XIII.

### INDICTMENTS, &c.

#### FOR OFFENCES AGAINST PUBLIC POLICE AND ECONOMY.

#### INDICTMENTS, &c. FOR NOT REPAIRING HIGHWAYS.

##### PRELIMINARY NOTES. (a)

*Of\* the offence.* As the offence of suffering highways to continue unrepaired consists in a mere nonfeasance, to determine in what cases it exists, it will only be necessary to enquire what are considered as public ways, in respect of which an indictment may be supported, and who are the parties bound to repair them. [\*565]  
Of the of-  
fence.

Ways are of three kinds, first a footway, called in Latin iter; secondly a pack and prime way, or road for foot passengers and horses, termed actus; and thirdly, a road for carriages, horses and men, which is denominated via, or aditus, and includes both the former, Co. Lit. 56. Hawk. b. 1. c. 76. s. 1. The term way signifies, in legal acceptation, merely the surface of the ground over which the king's subjects have a right to pass, and does not include the\* fences on either side, 2 Term. Rep. 232, 234. Rol. Abr. 392. A common street and a king's highway, though formerly distinguished, are now equally public, 1 Stra. 44. Any of [\*566]

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(a) On this subject, in general, Highways. 2 Saund. 157 to 162, see Hawk. b. 1. c. 76. per totum. with notes. Williams, J. High- Bac. Abr. Highways. Burn, J. ways. Dick. J. Highways.  
*Crim. Law.* VOL. III. A

these roads which are common to all his majesty's subjects — whether they be for the use of carriages, horses, or foot passengers only, or whether they lead directly to a market, or only from one town to another, or even from a hamlet, (4 Burr. 2091; 2.) may properly be termed high or common ways, and any default in those bound to repair them, or obstructions laid upon them, may be redressed by criminal process, Hawk. b. 1. c. 76. s. 1. It has also been laid down, that an open river may be termed a highway, and is protected by similar proceedings, *id. ibid.*; but it was observed by Mr. J. Buller in 3 Term. Rep. 263. that a navigable river and a highway are perfectly distinct, and that if a river should happen to be choaked up with mud, that would not give the public a right to cut another passage through the adjoining lands; though it is quite clear, as observed by the same learned judge, that if the usual track of a highway become impassable, by the overflowing of a stream or otherwise, the adjacent ground will be open to passengers, and so become, in effect, a highway until the removal of the obstruction, Doug. 746, &c. It has been held that a private individual who builds a street, or otherwise opens a thoroughfare to the public, without erecting any bar to preserve his right of stoppage, or even throws open a passage without any visible mark of exclusion or prohibition to persons using it, will, after the expiration of six years, be considered as having dedicated it to the public, and that therefore it cannot afterwards be closed, 11 East, 375. 1 Campb. 260.; but see 5 Taunt. 125. 4 Campb. 16. But this is merely a communication of the right of passage; for the original owner retains his interest in the soil, with all trees which grow upon it and mines which may be opened beneath it, 2 Inst. 705. 1 Burr. 143. 2 Stra. 1004. 1 Campb. 260, notes. And if a gate be originally placed when the way was opened, though it be suffered to decay, the way will continue private, Burn, J. Highways in general I. 5 Taunt. 125. 4 Campb. 16. Though all public roads are highways, a path which leads only to a parish church, to the common fields of a town, or even to a village, and terminates there, being intended for the use of a particular class of people, is not a highway, and therefore any neglect to repair or other nuisance affecting it, can only be redressed by an action on the case, which any one having a right to use it may maintain, Hawk. b. 1. c. 76. s. 1.

At common law, the general charge of repairing all highways lies on the parishes through which they pass; each being liable to repair the portions of road which are situate within its own limits, Hawk. b. 1. c. 76. s. 5. And therefore, if a particular district within\* it is expressly exempted

from liability to repair new roads by the provisions of a road act, the charge must necessarily fall on the rest of the parish, 1 T. R. 111. 1 Ventr. 90, 183, 189. Hawk. b. 1. c. 76. s. 5. And this general principle of the liability of the parish is so strong, that if, by statute, trustees or other persons are made responsible for the condition of ways, and afterwards become insolvent, the duty of the parishioners revives, 1 Ld. Raym. 725. 3 Campb. 222. As the duty is thrown upon the whole parish, no indictment can be sustained against any particular part of it, any more than against a private individual, without shewing the particular grounds by which the liability is shifted, 2 T. R. 513. So, though it was once decided, contrary to the older authorities, that where a parish lies within two counties, the inhabitants of that part alone in which the decay was charged should be indicted, 4 Burr. 2507.; it is now settled that this circumstance will make no difference, and the whole must be charged jointly as if it lay within the same county, 5 T. R. 498. and on the other hand, where the way out of repair runs through several parishes, a joint indictment against such parishes is not sustainable, 6 Wentw. 409. in notes. As it frequently happens that the boundary of parishes is in the middle of a highway, so that both are liable to repair part, in order to prevent the difficulty which might arise from this circumstance, the 34 Geo. III. c. 60. enables two justices to settle and mark the boundaries, and their division will compel both parishes to repair the portions they allot to each of them. Where the parochial situation of the road is altered by an award of commissioners under an inclosure act, but the parish to which it originally belonged continues to repair it for a time, and then suffers it to go to decay, the inhabitants must, in order to exonerate themselves, prove that the proper notices were given required by the statute, 2 M. & S. 558. The mode by which each parish is enabled to keep its roads in repair is set forth in the 13 Geo. III. c. 78. and 13 Geo. III. c. 84. which repeal all the former statutes which before were both complicated and numerous.

But though the parish is thus, *prima facie*, liable to repair, the burden may be thrown on others by the operation of various causes, and it is said that even by common right the occupiers of the lands adjoining a highway are bound to cleanse the ditches by which their lands are protected, Hawk. b. 1. c. 76. s. 5. Bac. Abr. Highways, E. Individuals or corporations may become bound to repair particular ways by *inclosure or prescription*. The liability consequent on *inclosure* arises from the right of the public, when a highway is obstructed, to go on the lands adjacent, whether they are cultivated or barren, 2 Saund. 161. n. 12. Dougl. 749. And there-

[\*568] fore if a person, who is the proprietor of open lands adjoining\* a highway, fences them in on both sides of the road, he will be bound to keep it in sufficient repair; because before such inclosure, when the road was in decay, passengers could avoid the inconvenience by taking a circuit through his grounds, which opportunity is now prevented, Cro. Car. 366. Hawk. b. 1. c. 76. s. 6. And on this ground it is, that it will not discharge him from making the road sufficiently passable, that he keeps it in as good repair as it was previous to the inclosure, Hawk. b. 1. c. 76. s. 6. On this ground too, if a proprietor inclose land on one side of the road only, and there is an ancient fence on the other, he will be compelled to repair the whole of the highway lying between them, but if there is no inclosure on the other side of long standing, he will only be liable to amend half of it, and will share the responsibility with the owner of the opposite lands, 1. Sid. 464. Hawk. b. 1. c. 76. s. 7. 2 Saund. by Wms. 161. note 12. And if the road be insufficient, any of the king's subjects may justify breaking down the inclosure, and passing, as before, on the adjoining land, 3 Salk. 182. But the party liable may discharge himself from all liability by throwing down the inclosure by which it was thrown upon him, Hawk. b. 1. c. 76. s. 6. 2. Saund. 160, 161. Ambl. Rep. 295. And when the lands are inclosed by force of a legal warrant, as under an act of parliament, no duty is thrown on the owner, 1 Burr. 461. And when the course of a road is changed by a writ of ad quod damnum, the inhabitants, if it pass through the same parish, are bound to repair the new road, and not the party through whose lands it may be made, unless the jury impose such condition upon him, see 2 Saund. 161. note 12. 1 Burr. 465. because such inhabitants were liable to repair the old way, and no additional burden is laid on them by the change; but if the road be diverted into a different parish, the land owner must repair, because the inhabitants of the district into which it is turned were relieved from no liability by shutting up the old road, and the legislature will not impose a charge upon them for which they receive no recompense, 3 Atk. 772. 1 Burr. 465. Hawk. b. 1. c. 76. s. 7.

The other cause of shifting the duty of amending roads from the parish to others is *prescription*. A corporation aggregate may be thus bound by force merely of ancient custom, without shewing any duty as connected with the reception of profits or the tenure of lands; because such a body, in contemplation of law, never dies, and if it once exists, its liability always continues, Hawk. b. 1. c. 76. s. 8. The inhabitants of a division of a parish may also by this means be liable to repair, without any peculiar benefit, 2 Saund. 158, d. n. 9. But an individual cannot be bound by the continual

practice of his ancestors, unless he receive some toll or profit,\* [\*569] or holds lands under such a tenure, 13 Co. 33. Hawk. b. 1. c. 76. s. 8. 2 Saund. 158. d. n. 9. 1 M. & S. 435. And when the origin of a way can be shewn, the prescription to repair it is necessarily destroyed, 2 Stra. 909. In order to subject any person thus liable to repair to a prosecution, the road must be incommodious, not from the season or its own narrowness, but from the want of sufficient reparation, 2 Ld. Raym. 1169.

*Modes of Prosecution.*—There are three ways by which parties or districts liable to repair highways may be prosecuted for suffering them to decay; by indictment, information, and the presentment of a judge or justice of the peace. Of these, indictment is now the more usual course of proceeding. An information may, indeed, be granted in the discretion of the King's Bench on such a cause, Sir Tho. Raym. 384, Hawk. b. 1. c. 78. s. 24. ante 1 vol. But they will not give leave to file it when the way is not much used, and there appears to be another road as convenient for the public in sufficient repair. Indeed they never allow it unless in cases of great importance, or where the grand jury have been guilty of gross misbehaviour, in refusing to find the bill, ante 1 vol. because the fine on conviction, on such a proceeding, cannot be applied to the repair of the nuisance, which is always the case when the party is indicted, Bac. Abr. Highways H. The presentment was formerly regulated by 5 Eliz. c. 13. s. 9. But now this kind of proceeding depends entirely on 13 Geo. III. c. 78. s. 24. which repeals all previous provisions. That statute empowers all justices of assize of the counties Palatine of great sessions in Wales, and of the peace on their own view, or upon information on oath by any surveyor of the highways, to make presentment at their respective assizes or great sessions, of any public road out of repair within the limits over which the power of the court may extend. A presentment thus made has exactly the same effect as the finding of a grand jury; and it has been held, that the power given by the 16th section of the 13th Geo. III. c. 78. to two justices, to order any highways to be widened, extends to roads repairable, *ratione tenuræ*, Cowp. 648. But neither this proceeding nor that of indictment can be instituted before any other tribunal than that in the jurisdiction of which they arise. And no certiorari can be allowed to remove them from thence before traverse and judgment, unless the duty to repair be denied: as, however, this clause makes no mention of the crown, and as the traverse can proceed from the other party, it is holden that the prosecutor, though he merely uses the king's name, is not affected by this regulation; but may remove the proceedings whenever he thinks fit, and that it was the delay of the de-

Modes of  
Prosecu-  
tion.

[\*570] fendants only against which the statute was directed,\* Cowp. 78. It was formerly doubted, whether under the 5th Eliz. c. 13. s. 9. the fact of the nuisance could be traversed, and it was thought that, upon presentment, nothing but the obligation to repair could be disputed, though these ideas seem always to have been unfounded, 2 Saund. 158. n. 3. However, by 13 Geo. III. c. 78. s. 24. this matter is expressly settled, and every defence which could be relied on upon an indictment will be equally available when the nuisance is presented by a judge or justice, ante 10, 11, in notes.

Indictment  
and pre-  
sentment.

*Form of Indictment and Presentment.*—1st. Against the *parish*. An indictment against a parish for not repairing must shew three things: that the road in question is a highway; that it is situate within the parish; and that it is out of repair. With respect to the description of the road, though it is usual to state that “from time whereof the memory of man is not to the contrary,” or “from time immemorial,” there was and yet is a certain common and ancient king’s highway, it is now settled that this averment of its antiquity is unnecessary, and that the term “highway” will suffice, 3 T. R. 265. 2 Saund. 158. n. 4. and it has been held that if the nuisance be laid to all the king’s subjects, it is necessarily implied that the way wherein it is, is a common way for public benefit, 1 Vent. 208. Say. 168. It has been said that it is not requisite to state whether it is for the use of carriages, horses, or foot passengers, but that if it be laid to be a common highway, the rest will be intended, R. T. Hard. 315, 316., 2 Saund. 158. n. 8., Trem. 201, 205., Cro. Car. 266., 1 Salk. 359. but as so general a description would be improper if the road be not an highway for all purposes, it is certainly prudent to insert the more particular description, 8 East, 4. It is not necessary in any case, to state the termini of the way in question, for highways have no certain boundaries, 2 Sess. Cas. 219., 1 Hen. Bla. 351., Andr. 145., 10 Mod. 382., Latch. 183., Palm. 382., 2 Rol. Rep. 412., 1 Stra. 44, 2 Saund. 158, n. (6.) But if any boundaries are stated, care must be taken that the description is neither so framed as to exclude the parish liable, or to seem repugnant to itself; for if the highway be described as *between* two places, both of them are necessarily excluded, 2 Saund. 158. n. (6.) And the words *from* and *unto* have both of them an exclusive meaning, 2 Rol. Abr. 81., 1 Leach, 528., 1 Burr. 376. But the place in question must be shown to lie within the parish which is indicted, Cowp. 111., 2 Saund. 158. (5.) And, therefore, as the words *from* and *unto* are exclusive, if the allegation be that the road leads *from* or *to* the parish, though the part out of repair is charged as situate within it, the subsequent averment will not aid the defect,



and after a verdict of guilty, judgment will be arrested, 1 Leach, 528., 5 T. R. 513., 4 Burr. 2090. Hawk. b. 1. c. 79. s. \* 86., 2. Saund. 158. n. (6.) so a material variance from the description in the indictment will be fatal ; thus an averment that the highway leads from A. to C. will not be satisfied by evidence of a road leading from A. to B., and communicating by means of a cross road, 6 Esp. R. 136. But an indictment describing the way as leading from a hamlet in the parish indicted is good, because the road may well pass through other parts of the same district, 4 Burr. 2090. And to describe the road as leading from a hamlet is sufficient, though it was formerly thought it must be shown that it led from one town to another, id. ibid. [\*571]

The indictment must also expressly show that the way is in bad repair, and an allegation that it is narrow and muddy will not suffice, 2 Ld. Raym. 1169. see Andr. 234. It seems doubtful how far it is necessary to state the extent of the nuisance, by showing how many feet in length and in breadth are out of repair ; as some authorities assert that it is requisite, Cro. Jac. 324., 2 Rol. Ab. 80, 81., R. T. Hardw. 105, 106, 316., Hawk. b. 1. c. 76. s. 88. and others are expressly against it, Say. 167, 301, 98. But as the reason assigned for its insertion is that the court may be able to judge with certainty of the fine which they ought to impose, and as they do not at present estimate the sentence from the formal statement on the record, it seems to be the better opinion that it might be omitted ; 2 Saund. 158. n. (7.) though it is certainly most prudent to introduce it, especially as the allegation as to the extent need not be proved precisely as alledged. Where the road lies in two parishes, an indictment against one of them for not repairing one side of a road must state that each parish was liable to repair *ad medium filum viæ*, and not merely that a certain part of the way of a particular breadth was out of repair, and that the parties indicted were bound to amend it, Peake Rep. 219. 6 Wentw. 409. in notes.

When the indictment is against an *individual*, or a *township*, or *class of persons*, not of common right bound to repair, the mode in which the defendant became liable must be stated, 5 Burr. 2700. A subdivision of a parish can only be liable by custom, prescription, or legislative provision, and an indictment against the inhabitants of it must show specially the liability of the inhabitants to repair, 5 Burr. 2700., 2 T. R. 513., Andr. 256. and where a party is indicted for not repairing pavement before his house, his liability to repair must be shown, 2 Ld. Raym. 922. But if an individual be bound to amend a road by reason of holding certain estates in fee simple, it is sufficient to aver that he is liable by reason of the tenure of his lands, without adding "as he and all those who held the

[\*572] said lands for the time being, from time whereof\* the memory of man is not to the contrary, were used to do ;” for a prescription is necessarily implied in the estate of inheritance which he possesses, Co. Ent. 358., Keilw. 52. pl. 4. Hawk. b. 1. c. 76. s. 8. But where the duty arises from inhabitancy alone, it is necessary to state the usage, Keilw. 52. 2 Saund. 158. n. 9. And although Styles, 400, seems at first to oppose this proposition, it appears from the construction put on it in 2 Saund. 158. n. 9. to be in reality in its favour ; for there the indictment stated that the party was bound to repair *by reason of his tenements*, and was quashed only because the word *tenure* was not inserted. And it seems to be sufficient to state the liability *ratione tenuræ terræ* without adding *sua*, though it has been thought otherwise ; because the court will intend the tenure to be such as will make the defendant chargeable, 2 Saund. 158. n. 9., 1 Ventr. 331., 1 Stra. 187. But the terms *rationæ tenuræ* should be adhered to, and no others, however similar their import may appear, substituted in their room ; for the insertion of ownership and proprietorship was holden insufficient to excuse the omission, 1 M. and S. 435., Styles 400. Agreeably to the distinction between a duty to repair arising from tenure, and that which results only from inhabitancy, it has been holden that where the inhabitants of a division of a parish, as a district, township, or hamlet, are indicted for not repairing, it is not sufficient to aver that from time immemorial they ought to repair and amend it, but it ought to be stated that the inhabitants of such district, from time whereof the memory of man is not to the contrary, have used and been accustomed, and of right, ought so to do ; because the obligation does not exist at common law, but must arise from custom or prescription, which should be stated on the record, 2 Saund. 158. n. 9., 5 Burr. 2700., 2 T. R. 11. see forms of indictment against a district or township, post 19 to 23. And in general, where a district less than a parish is indicted, it must be expressly shown how the duty arises, 2 T. R. 513., Andr. 276., 2 Saund. 158. n. 9.

Pleas,

*Plea.* The case of highways is almost the only instance in which the merits of a criminal charge may not always be investigated under the general issue. When the obligation to repair is admitted, and the fact of the bad state of the road is alone disputed, there can, of course, be no other plea than not guilty. But it is where the defence is rested on a denial of the liability to amend, that the question as to the form of pleading arises. When this is the case, it is settled that if the defendants are those, who of common right ought to repair, as the parish at large, they cannot throw the liability from themselves upon any others by pleading the general issue,

but must state the liability of the other parties in a\* special plea, ante 1 vol. 473, 474., 1 Mod. 112., 12 East, 192., 13 East, 95., Hawk. b. 1. c. 76. s. 9., 1 Ld. Raym. 725., 2 Saund. 159. n. 10., 1 T. R. 111. But this rule does not apply where the duty is transferred by a public act of parliament, of which all are supposed to take cognizance, 3 Campb. 222. And the parish may give in evidence under the general issue that the way is not public, ante 1 vol. 473, 474. and, in order to conduce to that point, may show that private individuals have been accustomed to repair it, 2 M. and S. 262. And by a special plea, the parish may rebut the *prima facie* obligation to repair, and show that others are liable. Thus where the parties really bound have been already convicted of suffering the same road to be out of repair, the defendants may plead the conviction, setting out the record and averring the identity of the way in respect of which they are indicted, Sir Tho. Raym., 385., Trem. P. C. 206. Where, on the other hand, the defendants are charged as bound to repair from custom, prescription, or tenure, they may under the general issue negative the duty thus alledged, and throw the burden on the parish, or even on a particular individual or district, Comb. 396., 1 Stra. 181, 2, 3. 2 Saund. 159. b. n. 10. And the reason of this distinction is, that the prosecutor must, in order to support his charge, prove the defendants to be thus chargeable, and therefore they are at liberty to disprove it by opposite evidence, 2 Saund. 158. n. 10. ante 1 vol. 473, 4. When different subdivisions of a parish have immemorially repaired the highways within their respective limits, and the parish at large is indicted, this prescription must be pleaded, because if, on verdict of guilty or default, judgment be given against the parish, the judgment may afterwards be given as evidence of the liability of the whole parish to repair, Peake, N. P. 219. But the effect of this presumption may be avoided, if the districts in which the road in bad repair did not lie can show that they were not aware of the proceedings, and that the defence was conducted without their knowledge or concurrence; in which case the court will consider the indictment as in reality against the division alone where the nuisance existed, and will permit the other divisions to plead the prescription to any subsequent prosecution against the parish at large, Dougl. 421., 2 Saund. 159. b. n. 10. The form of the plea in such a case is given, ante 1 vol. 475, 6. as extracted from 2 Saund. 159. b. n. 10. see also post. On this plea, issue will be joined, and, if the prescription be proved, the parish will receive an acquittal, 2 Saund. 159. b. n. 10.

Every special plea must not only deny that the defendant is bound to repair, but must state on whom the obligation lies and from whence it arises, 1 Sid. 140., Carth. 213., 2

[\*574] Saund. 159. n.\* 10. And even where a special plea is unnecessary, and the whole defence might be given in evidence under the general issue, if the defendant will unnecessarily plead specially that he is not bound to amend, he must go further, and state in whom the duty exists, *id. ibid.* And it will be necessary to traverse the obligation which the indictment alleges, 2 Saund. 159. n. 10. But where a parish is indicted for not repairing a highway which they are bound of common right to preserve, they ought not to traverse their own obligation to repair, but merely show the liability to be thrown on others; for it is in this case a traverse of a matter of law, and as such, though often inserted, is demurrable, and should always be omitted, 1 Saund. 23, n. 5., 2 Saund. 159. n. 10.

Replica-  
tions.

*Replications, &c.* If the plea of the parish improperly conclude with a traverse, the replication ought not to take issue upon it, but on the liability of the parties to whom the duty is endeavoured to be transferred, 2 Lev. 112., 1 Saund. 23. n. 5. If the plea conclude to the country, the similiter may be immediately added, "and A. B. who prosecutes for our Lord the king doth the like." See 1 vol. 478. The proceedings may, at any time, be stayed on affidavit, and the certificate of two justices that the road in question is now in a good state of repair, and is likely so to continue, 3 Smith, 575. 1 Bla. Rep. 602, 295. But the affidavits must expressly state the probable continuance of the repair, 3 Smith, 575, and the prosecutor's cost must be paid up to the time when the defendant makes his submission, 1 Bla. Rep. 602, ante 1 vol. 691, &c.

Of a view.

*Of a view.* It may frequently be requisite on the part either of the prosecutor or defendant, that the jury should have *a view* of the place indicted. This cannot, it seems, be granted by the judges at the assizes, 1 Sess. Cas. 180. 2 Barnard, 214. 1 vol. 378, 483, but may be obtained by removing the proceedings into the king's bench by certiorari, which will, on proper affidavits, be granted. We have already seen that the forms on this occasion will be, in general, similar to those which are observed in civil proceedings, 1 vol. 483.

New trial.

*New Trial.* Although the trial of a prosecution for not repairing highways is, in general, a mere contest respecting a civil liability, as the proceedings are in form criminal, the court, after verdict for the defendant, will not grant a new trial; but, if the nuisance in question continues, the continuance will form a distinct offence, for which he may be again indicted, 6 East, 315. ante 1 vol. 657.

Judgment.

*Judgment.* As the object of this prosecution is not the punishment of the defendant, but the repair of the highway,

it is not indispensably\* requisite that he should be in personal attendance at the time judgment is pronounced upon him, and where a district is indicted, this is of course impossible. 1 Salk. 55, 6. Hawk. b. 2. c. 48. s. 17. 1 vol. 695, 6. Where an individual has been found guilty, he may obtain a rule to show cause why his personal appearance may not be excused, on his agent's engaging to pay such fine as the court may assess; and if the prosecutor acquiesce, or no sufficient reason to the contrary is shown, the court will make the rule absolute, and give the judgment in the defendant's absence, 1 vol. 696. The judgment against the defendants usually is, that they should pay a fine and repair the nuisance, Bro. Abr. Nuisance 49. 8 T. R. 142, 3. But if a justice of the peace grant a certificate that the road is now in good condition, the court will merely assess a small fine, as 6s. 8d. or 13s. 4d. 13 East, 164. 3 Smith, 575. 6 T. R. 635. And if the certificate state that the way has since been diverted by the order of two justices, and that so much of the old way as is retained is in repair, the sentence will only be passed for the nominal penalty, 13 East, 166, 7. And, therefore, to give a false certificate is an indictable offence, as obstructing the course of justice, and may be the subject of a conspiracy between the magistrates and the persons who procured their assistance, 6 T. R. 619. Williams, J. Highways XII. The fine is not to be returned into the exchequer, but paid to such person as the court shall order, and applied to the repair of the road in question. And if, after the conviction of a parish, the fine assessed be levied on individual inhabitants, those persons may complain at the special sessions, and the justices there assembled are to cause a rate to be made, reimbursing them for the money they have expended, 13 Geo. III. c. 78. s. 47. But justice will not be satisfied with a payment of the fine, for a distringas will be issued in infinitum, until the road is put in a state of sufficient repair, 1 Salk. 359. 6 Mod. 163. [\*575]

*Costs.* It is enacted by 13 Geo. III. c. 78. s. 64. that it shall be lawful for the court, before whom any indictment or presentment shall be tried for not repairing highways, to award costs to the prosecutor, to be paid by the defendants, if it appear to the court that the defence was frivolous, or to the defendants, to be paid by the prosecutor, if the court shall think that the prosecution was vexatious, ante 1 Vol. Under this clause, the application must be made to the judge who tries the indictment, and, if this be omitted, the king's bench will not afterwards interfere. 5 T. R. 272. But no precise form of certificate seems to be necessary, and if it be stated on the back of the record that the defence was frivolous, this will suffice, without proceeding to award\* costs [\*576]

to the prosecutor, 6 T. R. 344. If a surveyor of a parish conduct or defend a proceeding in its name, and with its concurrence, he may charge the sums in his account, which he has been obliged to disburse, 13 Geo. III. c. 78. s. 65. And it has been holden that if a justice of the peace indict for a road being out of repair, and the defendant removes the proceedings by certiorari, the magistrate will be entitled to his costs under 5 and 6 W. and M. c. 11. s. 3. as a party grieved by the nuisance, 5 T. R. 33.

### INDICTMENTS, &c. FOR NOT REPAIRING HIGHWAYS.

Indictment against inhabitants of parish for not repairing a common highway.  
(a)

[#577]

Surry to wit. The jurors for our lord the king, upon their oath, present, that on, &c. (b) there was, and from thence hitherto there hath been, and still is, (c) a certain common and public king's highway (d) leading from A. in the county of S. towards and unto B. in the same county (e) for all the liege subjects of our said lord the king to go, return, pass, and repass, ride, and labour, with their horses, coaches, (f) carts, and carriages, in and along the same, at their free will, and pleasure, and (g) that a certain part of the same common and public highway situate, lying, and being in the parish of G. in the county of Surry aforesaid,\* extending from a certain place called — to a certain bridge called

(a) See other precedents against a parish, Cro. C. C. (8 Ed.) 307, 8, 9, 320. 4 Wentw. 162, 170, 174, 179, 184. 6 Wentw. 406. to 410. 4 Burr. 2090. Starkie, 667 to 672. and the general notes, ante 565 to 576.

(b) This should be some day when the highway was first out of repair, but the precise day is not material.

(c) The allegation in the older precedents was thus, "that there now is, and from time whereof the memory of man is not to the contrary, there was a certain, &c." but this allegation is unnecessary and injudicious, ante 570. and see Cro. C. C. 8th Ed. 321. Sometimes the form runs, "that long before and at the time of the commencement of the nuisance hereinafter mentioned,

there was and of right ought to have been, and still of right ought to be, a certain common, &c."

(d) The term "highway" would suffice, ante 570. 3 T. R. 265. 2 Saund. 158, n. 4.

(e) It does not seem to be necessary, though usual, to state the termini, ante 570. but see forms of stating them, Cro. C. C. 8th Ed. 307, 8, 321.

(f) The word "coaches" is usually inserted, though they came into use long since time of legal memory. Chitty App. Law 118. If the indictment state that the way was immemorial, it would be prudent to omit the word "coaches."

(g) It is not necessary that the indictment should contain the statement of a further presentment.



— (h) and containing in length, divers, to wit, one hundred and twenty yards, and in breadth, divers, to wit, fifteen feet, (i) on the said, &c. (k) was, and from thence until the day of the taking of this inquisition at the said parish of, &c. hath been and still is very ruinous, miry, deep, broken, and in great decay, for want of due and needful and necessary reparation and amendment of the same, so that the liege subjects of our said lord the now king, in and along the same way, with their horses, coaches, carts, and carriages, could not, during the time aforesaid, nor yet can, go, return, pass, repass, ride, and labour, without great danger of their lives, and the loss of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, in and along the same way, going, returning, passing, repassing, tiding, and labouring, and against the peace of our said lord the king, his crown and dignity, and that (l) the inhabitants of the said parish of G. in the said county of Surry, the said common and public king's highway, so being ruinous and in decay as aforesaid, during all the time aforesaid, of right ought to have repaired and amended, and still of right ought to repair and amend, when and as often as it should, or shall, or may, be necessary.

[When there is any doubt as to the termini of the road, or any other part of the facts, then counts may be added, varying the description as in 4 Wentw. 170, 1, and in that case it may be prudent to add a general count, omitting any statement of the termini, either of the road or of the parts out of repair, and merely stating that there was a highway in the parish, and that the same, being of such a length and breadth, was out of repair.] Second count.

[Precedents of these presentments are given ante 9 and 10. The forms are in a great measure prescribed by 13 Geo. III. c. 78. s. 24. and schedule No. 32. See also other precedents referred to in the notes.] Presentment of a judge or justice of the peace of a highway being out of repair, and obligation of parish to repair, under 13 Geo. III. c. 78.

(h) It is usual though unnecessary to state the termini of the part of the road out of repair, ante 570. 1. See forms which state it, Cro. C. C. 8 Ed. 308, 309, 321. 4 Wentw. 162, 171, 179, 184. 6 Went. 406. and forms which do not contain the statement, Cro. C. C. 8 Ed. 307. 4 Went. 170, 175. 2 Starkie, 667. The form of presentment given in 13 Geo. III. c. 78. contains the termini, and therefore it may be advisable in general to state them when they can be readily ascertained.

(i) It does not seem to be absolutely necessary to state the length and breadth, see ante 571. but it is prudent to state them, ante 571. see forms, Cro. C. C. 8th Ed. 307, 308, 321.

(k) The day first named.

(l) The introduction of this allegation, with a further presentment, is unnecessary, and the indictment may be, and that "the inhabitants," &c. as in this form.

**[\*578]** For not repairing a part of highway situate in a parish which lies in two counties, against the whole parish. (m) That\* long before and at the time of the commencement of the nuisance hereinafter mentioned, there was, and of right ought to have been, and still is, and of right ought to be, a certain common and public king's highway, leading from that part of the parish of St. A. the less, in the city of B. and county of the same city, which lies near to a certain place then called the lime kilns, unto a certain place called and known by the name of D. square, in that part of the parish of C. which lies in the county of G. for all the liege subjects of our said lord the king, with their horses, coaches, carts, and other carriages, to go, return, pass, repass, ride, and labour, at their will and pleasure; and that a great part of the said parish of C. is situate in the city of B. and county of the same city, and the residue of the same parish is situate in the said county of G. and that a certain part of the said king's common highway, situate, lying, and being in that part of the said parish of C. which lies in the said county of G. commencing opposite to a certain public house, called and known by the name and sign of, &c. situate in that part of the said parish of C. which lies in the said county of G. near to a certain place called K. and extending towards D. square aforesaid, and containing in length one thousand and five hundred feet, and in breadth fourteen feet, on, &c. and continually afterwards, until the day of the taking of this inquisition, at that part of the said parish of C. which lies in the said county of G. was and yet is very ruinous, miry, deep, broken, and in great decay, for want of due reparation and amendment of the same, so that the liege subjects of our said lord the king, in and through the same part of the said way, so as aforesaid being in decay, with their horses, coaches, carts, and other carriages, could not, during the time last aforesaid, nor yet can go, return, pass, repass, ride, and labour, as they ought and were wont to do, without great danger of their lives, and the loss of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, in and through the same way, going, returning, passing, repassing, riding, and labouring, and against the peace of our said lord the king, his crown and dignity; and that the inhabitants of the said parish of C. in the city of B. and county of the same city, and the inhabitants of the same parish of C. in the said county of G. the said common and public king's highway so being ruinous

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(m) The indictment must be against the whole parish, and not against that part only which lies in the county where the way is out of repair. 5 T. R. 498. The form in Cro. C. C. 8th Ed. 320, 1. is defective. This is framed according to the suggestions in 5 T. R. 506.

and in decay as aforesaid, during all the time aforesaid.\* [\*579] ought to have repaired and amended, and still of right ought to repair and amend, when and as often as it should or shall or may be necessary.

That on, &c. and during all the time hereinafter mentioned, there was and still is a certain common and ancient king's highway, leading from the town of M. in the county of N. unto the town of C. in the county of D. used for all the liege subjects of our said lord the king and his predecessors, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour, at their free will and pleasure, and that a certain part of the said king's common highway, situate, lying, and being within the parish of H. in the county of D. beginning at a brook called S. B. and so continuing towards the said town of C. for the length of one hundred and ninety eight yards, and containing one hundred and ninety eight yards in length, and ten yards in breadth, and a certain other part of the said king's highway, situate within the said parish of H. beginning twenty two yards southward from the sixth milestone, leading from M. to C. and so continuing towards the said town of C. and containing three hundred and seventy four yards in length, and ten yards in breadth, and also a certain other part of the said king's highway, situate within the said parish of H. beginning at one hundred and eighty yards northward, from a bridge called D. L. bridge, and so continuing towards the said town of C. for the length of one hundred and thirty two yards, and containing one hundred and thirty two yards in length, and ten yards in breadth, on, &c. and continually afterwards, until the day of taking this inquisition at the said parish of H. were and yet are very ruinous, miry, deep, broken, and in great decay, for want of due reparation and amendment of the same, so that the liege subjects of our said lord the king, passing and travelling through the same way, with their horses, coaches, carts, and carriages, could not, during the time aforesaid, nor yet can go, return, pass, ride, and labour, without great danger of their lives, and the loss of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, passing through that way, and against the peace, &c. and that the inhabitants of the said parish of H. the said parts of the said highway, so as aforesaid being in decay, ought to repair and amend, when and as often as the same shall be necessary.

Indict-  
ment a-  
gainst a pa-  
rish for not  
repairing  
three dis-  
tinct parts  
of an high-  
way. (n)

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[n] See the two last precedents te 565. to 576.  
and notes, and the general note an-

[\*580]  
Against in-  
habitants  
of parish  
for not re-  
pairing an  
ancient  
horse and  
foot way,  
called a  
pack and  
prime  
way. (o)

[Commencement as ante 576.] That on, &c. there was, and from thence hitherto there hath been and still is, a certain common\* and ancient pack and prime way, (*p*) leading from the village of L. in the county of S. to the village of D. in the same county, for all the liege subjects of our lord the king and his ancestors, on horseback and on foot, to go, return, pass, repass, ride, labour, and drive their cattle at their free will and pleasure; and that a certain part of the same common pack and prime way, situate, lying, and being within the parish of G. in the county aforesaid, containing in length three hundred yards, and in breadth five yards, on, &c. and continually afterwards, until the day of the taking this inquisition, at, &c. was, and yet is very ruinous, miry, deep, broken, and in great decay, for want of due reparation and amendment of the same, so that the liege subjects of our said lord the king in and by the same way, with their horses and cattle, could not, during the time aforesaid, nor yet can, go, return, pass, repass, ride, and labour, as they ought and were wont to do, without great danger of their lives, and the loss of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same way going, returning, passing, repassing, riding, and labouring, and against the peace, &c. And that the inhabitants of the said parish of G. in the county aforesaid, the same common pack and prime way, so as aforesaid being in decay, ought to repair and amend, when and so often as it should or shall be necessary.

Against a  
particular  
division of  
a parish  
for not re-  
pairing an  
highway.  
[q]

That on, &c. and long before, there was, and from thenceforth continually hitherto there hath been and still is, a certain common king's highway, leading from H. in the west riding of the county of Y. towards and unto H. in the west riding aforesaid, used for all the liege subjects of our said lord the king, to go, return, pass, and repass, on foot and horseback, and with cattle, carts, and carriages, at their will and pleasure, and that a certain part of the said common king's highway, situate, and being in that part of L. which lies within the constabulary of Q. in the parish of A. in the riding aforesaid, beginning at M. in the parish aforesaid, in the riding aforesaid, and extending from thence to a certain place

[o] See form Cro. C. C. 8th Ed. 307, 8.

[p] So called because it is a *foot-way*, which was the *prime* or *first* kind of path, and is a horse or *pack* way also, Co. Lit. 56. See the general precedent and notes, ante 576, 7, and the general notes, ante 565, to 576.

[q] See general precedent and notes, ante 576, 7. and general notes, ante 565. to 576. and as to the necessity of shewing the obligation to repair, see 2 T. R. 513. Andr. 256. 2 Saund. 158. n. 9. and general note, ante 571.

called D. and containing in length, divers, to wit, — yards, and in breadth, divers, to wit, — feet, on, &c. and from thence continually until the day of taking this inquisition, at that part of L. aforesaid,\* which lies within the constabulary of Q. aforesaid, in the parish aforesaid, in the riding aforesaid, was, and still is, very, &c. [*describe the state of the road as in the precedent, ante 577.*] and that within the parish of A. aforesaid, in the riding aforesaid from time whereof the memory of man is not to the contrary, there have been and still are, divers townships, districts, divisions, and places, whereof that part of L. aforesaid, which lies within the constabulary of Q. aforesaid, during all the time last aforesaid hath been and still is one, and that the inhabitants of that part of L. which lies within the constabulary of Q. aforesaid, in the parish aforesaid from time whereof the memory of man is not to the contrary, (r) have repaired and amended, and have been used and accustomed to repair and amend, and of right ought to have repaired and amended, and still of right ought to repair and amend, when and so often as it hath been or shall be necessary, such and so many of the common highways, situate, and being within that part of L. aforesaid, which lies within the constabulary of Q. aforesaid, as would otherwise be repairable and amendable by the inhabitants of the said parish at large, and that the said part of the same common highway hereinbefore mentioned to be ruinous, deep, miry, broken, and in decay, as aforesaid, now is, and during all the time when the same part of the said common highway is above alleged to be ruinous, deep, miry, broken, and in decay as aforesaid, was a common highway, which, but for the said prescription or (s) usage would be repairable and amendable by the inhabitants of the said parish of A. at large; and that by reason of the premises, the inhabitants of that part of L. which lies within the constabulary of Q. aforesaid, in the parish aforesaid, during all the time last aforesaid, ought to have repaired and amended, and still ought to repair and amend the same part of the said common highway, so being ruinous, deep, miry, broken, and in decay as aforesaid, when and so often as it hath been and shall be necessary.

[\*581]

[*The second count states the prescription thus :*] that with- Second  
in the parish of A. aforesaid, in the riding aforesaid, from count,  
time whereof the memory of man is not to the contrary,  
there have been and still are divers townships, districts, di-  
visions, and places whereof that part of L. which is within  
the constabulary of Q. aforesaid, during all the time last afore-  
said hath been and still is one; and that the inhabitants of

(r) As to the necessity for shew-  
ing the obligation to repair, see  
ante 571.

(s) Quære, if this should not be  
in the conjunctive "and."

[#582]

the said several and respective townships, districts, divisions,\* and places respectively from time whereof the memory of man is not to the contrary have repaired and amended, and have been used and accustomed to repair and amend, and of right ought to have repaired and amended, and still of right ought to repair and amend, independent of each other, when and so often as it hath been or shall be necessary, such and so many of the several and respective common king's highways respectively situate and being within the said respective townships, districts, divisions, and places as would otherwise be repairable and amended by the inhabitants of the said parish of A. at large.

For not repairing an highway, against inhabitants of parish except those of a township exempted by special provision.  
(t)

[Commencement as ante 576.] That on, &c. next after the making and passing of a certain act of parliament passed in the 19th year, &c. entitled, An Act for repairing and widening the road from, &c. to &c. [*set out the title of the act.*] J. P., &c. [*here set out the names.*] being sixteen of the trustees appointed by the said act to put the same into execution, at a meeting held on, &c. at, &c. made an order that the said road from S. to W. being part of the road by the said act directed to be ordered, altered, widened, turned, and repaired, and part thereof being in S. parish in the same act mentioned, should be forty feet wide, &c. [*state the terms of the order.*] And the jurors, &c. do further present, that at another meeting of the said trustees, held on, &c. it was ordered that the footway should be on the West side of the road through S. parish, &c. [*state the terms of the second order.*] And the jurors, &c. do further present, that afterwards, to wit, on, &c. the said road in the said orders mentioned, in such part thereof as was and is lying in the said parish of S. was in pursuance of the said order made and perfected, and then and there, by virtue of the said orders respectively and of the said act, became and was and ever since hath been a common public king's highway for all the king's subjects, with their horses, coaches, carts, and carriages to go, return, pass, re-pass, ride, and labour at their free-will and pleasure, and that afterwards, to wit, on, &c. a certain part of the said common king's highway in S. parish, in, &c. aforesaid, [*particularly describing it.*] and continually from that time was and is ruinous and out of repair; and that the inhabitants of the said parish of S. (except the inhabitants of the township of S.) ought to repair and amend the same, when and so often as shall be necessary. And the jurors, &c. do further present, that, on, &c. aforesaid, there was and yet is a certain com-

Second  
count.

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(t) This indictment was held good on demurrer, see 2 T. R. 106. See general precedent and notes ante 576, and general note ante 565 to 576.



mon king's highway, leading from, &c. aforesaid, to, &c. aforesaid, for all the liege subjects, &c.\* [*as before.*] and that a certain part of the said common king's highway, situate and being in S. parish, [*particularly describing it.*] on the said, &c. of and continually from that time until, &c. was and yet is very ruinous and out of repair. And that the inhabitants of the parish of S. (except the inhabitants of the township of S. who are exempted from the repair thereof, by virtue of an act of parliament passed in the 19th year, &c.) ought to repair and amend the same, when and as often as shall be necessary, &c. [*#583*]

[Commencement as ante 576.] That on, &c, there was and from thence hitherto hath been and still is a king's common highway leading from the market-town of C. in the said county, towards and into the market-town of S. in the county of Y., used for all the liege subjects of our said lord the king and of his predecessors, with their horses, coaches, carts, and other carriages, to go, return, pass, repass, ride, and labour at their free will and pleasure, and that a certain part of the king's common highway, situate, lying, and being in the township of T. in the county of L. aforesaid, beginning at a certain bridge there called Kirkbridge, and ending at a certain place there called Lancashire Gill, containing in length two thousand two hundred yards, and being of the breadth of three yards, on, &c. and continually afterwards until the day of the taking this inquisition, was and still is in great decay for the want of due reparation, and amendment, and enlargement of the same, so that the subjects of our said lord the king passing and travelling through the same with their horses, coaches, carts, and carriages, could not during the time aforesaid, nor yet can go, return, pass, repass, ride, and labour without great danger, to the great damage and common nuisance of all the liege subjects of our said lord the king passing through the same way, and against the peace of our said lord the king, his crown, and dignity. And that the inhabitants of the said township of T. in the said county of L. from time whereof the memory of man is not to the contrary, have repaired and amended, and have been used and accustomed to repair and amend, and of right ought to have repaired and amended, and still of right ought to repair and amend the said highways so in decay as aforesaid, when and so often as it hath been and shall be necessary. (x)

Against the township for not repairing road. (u)

(u) See precedents 4 Went. 160. 6 Went. 413. ante 580, and the general precedent and notes, ante 576, and the general notes, ante 565 to 576.

(x) The liability appears not to be sufficiently stated in 4 Went. 160, and 6 Went. 413. See 5 Burr. 2700. 2 T. R. 11. 2 Saund. 158, n. 9. ante 571, 2.

[\*584]  
Against in-  
habitants  
of a town-  
ship for  
not repair-  
ing a road  
made by  
act of par-  
liament.  
(y)

That before and upon, &c. there was and continually from thence hitherto hath been and still is, a certain common and public king's highway,\* leading from, &c. to &c. used for all the liege subjects of our said lord the king, with their horses, coaches, carts, and carriages, to go, return, pass, ride, and labour, at their free will and pleasure, and that a certain part of the said king's highway, situate, lying, and being in the township, of &c. being in the corner of a certain field in the said township called, &c. in the occupation of, &c. and extending from thence to the corner of a certain lawn in the said township, belonging to one, &c. and containing in length 242 yards, and in breadth 8 yards, on, &c. aforesaid, and from thence continually afterwards until the day of taking this inquisition, at the township aforesaid, in the county aforesaid, was, and yet is very ruinous, miry, deep, broken, and in great decay for want of due reparation and amendment of the same, so that the liege subjects of our said lord the king, through the same way with their horses, coaches, carts, and waggons, could not during the time aforesaid, nor yet can go, return, pass, ride, and labour without great danger of their lives and the loss of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same way going, returning, passing, riding, and labouring, and against the peace, &c. and that the said inhabitants of the said township of, &c. in the county aforesaid, the common highway as aforesaid, so as aforesaid being in decay, ought to repair and amend, when and so often as it shall be necessary. (z)

Against  
the inhabi-  
tants of a  
township  
for not re-  
pairing a  
road set  
out by the  
commis-  
sioners un-  
der inclo-  
sure acts.  
(a)

That before the day of taking this inquisition, by a certain act of parliament made in the parliament of our lord the now king, at a session thereof, holden at Westminster in the tenth year of his reign, entitled "An act for dividing and inclosing such of the open parts of the district called the Forest of Knaresborough in the county of York, as lie within the eleven constableries thereof, and for other purposes therein mentioned," it was (amongst other things) enacted, that C. D., E. F., &c. and their successors to be nominated and appointed in manner therein after mentioned should be, and they were thereby appointed, commissioners for setting out dividing, assigning and allotting all the open commonable grounds and waste lands within the said eleven constableries,

(y) From the MS. of a barrister. See the precedents and notes, ante 580 to 584, and the general precedent and notes, ante 576, and general notes ante 565 to 576.

(z) If a public act of parliament created the liability, this

conclusion might suffice, but otherwise it ought to state the liability of the township more specially, as ante 580, 1.

(a) As to the necessity for setting out parts of act, 1 M. & S. 435.

and for putting the said act in execution, and that the said commissioners,\* or any three or more of them should, and they were thereby required, to set out and appoint, &c. [\*585]  
*[state the clauses in the act applicable to the case,]* (b) as in and by the said act reference being thereunto had will more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, further present that after the making of the said act, and before the day of the taking of this inquisition, that is to say, by a certain other act of parliament made in the said parliament, at a session thereof holden at Westminster, in the 14th year of the reign of our said lord the now king, intituled "An act to amend an act passed in the tenth year of the reign of his present majesty, entitled, An act for dividing an enclosing such of the open parts of the district called the Forest of Knaresborough, in the county of York, as lie within the eleven constableries thereof, and for other purposes therein mentioned," it was amongst other things enacted *[setting out the material part of act,]* as in and by the said last mentioned in part recited act, reference being thereunto had, will more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, further present that afterwards and after the making and passing of the said several acts of parliament, and before the day of the taking of this inquisition, to wit, on, &c. at, &c. the said C. D., E. F., &c. in the said first in part recited act mentioned respectively pursuant, and in obedience to the said several acts took upon themselves the execution of the several powers and authorities reposed in them in and by the said several acts, as such commissioners as aforesaid. And the jurors, &c. further present, that after the making and passing of the said several acts, and after the said commissioners had taken upon them the execution of the powers and authorities so vested in them by the said several acts as aforesaid, and immediately after the said commissioners had made the aforesaid division and settled all the said several allotments pursuant to the directions of the said acts, to wit, on, &c. at, &c. they the said commissioners did form and draw up, and cause to be fairly engrossed on parchment, and did duly execute under their hands and seals, a general award or instrument, in manner and form, as was by the said first in part recited act directed, and by their said general award, amongst other ways and roads therein set out and appointed, did also set out and award, and did award the same to be for ever carriage roads, a certain part of the said open commonable grounds and waste lands, called — beginning at — and

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(b) As to the state ment of the vol. 275, &c., statute and enactments, see ante 1

[\*586] leading westward to — and a certain other part, &c. beginning at — and leading southward to — which\* said two roads in pursuance of the powers given to the said commissioners by the second act, they the said commissioners did thereby award to be made and kept in repair by the said inhabitants and occupiers of lands and tenements within the township of — and did thereby award that the roads should be called by the names above mentioned, as by the said award reference being thereunto had will more fully and at large appear. And the jurors, &c. further present, that the said last mentioned roads were and are roads leading into, through and adjoining the said allotments in the said second act mentioned, to wit, at the township of — aforesaid. And the jurors, &c. that a certain part, to wit, — yards in length, and — yards in breadth, of the said carriage roads so set out, and appointed to be carriage roads for ever as aforesaid, afterwards and after the making of the said award of the said commissioners in manner and form aforesaid, and after the said roads had been completed, made and found as required by the said act, to wit, on, &c. and from thence continually until the day of the taking of this inquisition, to wit, at the township of — aforesaid, in the county aforesaid, were and still are miry, ruinous, broken and in great decay, for want of the due reparation and amendment of the same, so that the liege subjects of our said lord the king by themselves, and with their horses, coaches, carts and carriages, could not, during all the time aforesaid, nor yet can go, return, pass, ride and labour without great danger of their lives and the loss of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king through the same carriage roads going, returning, passing, riding and labouring, contrary to the form of the acts of parliament aforesaid, and against the peace of our said lord the king, his crown and dignity, and that the inhabitants and occupiers of lands and tenements within the said township of — in the county of — aforesaid, the said carriage roads, so as aforesaid, being in decay by force of the said several acts, and by virtue of the said general award, so in pursuance thereof by the said commissioners made as aforesaid, ought, during the time last aforesaid, to have repaired and amended, and still ought to repair and amend when and so often as it hath been and shall be necessary.

[\*587]  
Against  
the mayor  
&c. of Car-

Cumberland. That from time whereof the memory of man is not to the contrary, there was and has been a certain ancient and common king's highway, leading from a certain village called B. in\* the said county of C. into a certain lane called S. lane, in the parish of S. in the city of C. in the said county, for all the liege subjects of our said lord the

king and his predecessors, kings and queens of this realm, by themselves, and with their horses, coaches, carts and carriages to go, return, pass, repass, ride and labour, at their will and pleasure, and that a certain part of the king's highway, containing in length — yards, and in breadth — feet, and lying in a certain street called Black Friars Street in the parish of St. Cuthbert aforesaid, in the city of Carlisle aforesaid, on, &c. and continually from thence afterwards until the day of the taking of this inquisition, at the said parish, in the said city of C. and county of C. was and yet is miry, ruinous, broken, dirty, and in great decay, for want of the due reparation and amendment of the same, so that the liege subjects of our said lord the king through the same way, by themselves and with their horses, coaches, carts and carriages, could not during the time aforesaid, nor yet can go, pass, repass, ride, and labour, without great danger of their lives and loss of their goods, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same way going, returning, passing, repassing, riding and labouring, and against the peace, &c. And that the mayor, aldermen, bailiffs and burgesses of the city of Carlisle aforesaid, by reason of their being intitled to and taking and receiving of certain tolls for the passage of cattle and loaded carriages through the said city of Carlisle during all the time aforesaid, the common highway aforesaid, above particularly mentioned and described (so as aforesaid being in decay) have been accustomed to repair and amend, and of right ought to have repaired and amended, and still of right ought to repair and amend, when and as often as occasion hath required, and have not done it, &c. [There were two other counts like the first, for other parts of the highway.]

lisle, for not repairing an highway which they are bound to repair in consideration of tolls. (c)

Averment that the corporation ought to repair as owners of tolls.

[Same as the general precedent, ante to the asterisk, and then proceed thus,] And that A. B. late of, &c. esquire, ought by reason of his tenure of certain lands, situate, lying and being in the said parish of — in the county aforesaid, to repair and amend the said highway, so being ruinous and in decay as aforesaid, when and as often as it should or shall or may be necessary.

Against an individual bound to repair ratione tenuræ. (d)

(c) See precedent, 4 Wentw. 157. and another form, id. 178. which seems not to state the tolls and liability sufficiently fully; as to the necessity for showing the liability, see ante 571, 2, and the

precedents and notes ante 580, &c.

(d) As to the requisites of this indictment, see ante 571, 2, and precedents, Cro. C. C. 8th Ed. 319. Cro. C. A. 400.

[#588]  
Against  
scaven-  
gers for  
not  
cleansing  
the  
streets.(e)

That A. B. late of, &c. and C. D. late of, &c. and long before, were and still are scavengers within the said parish, in the county aforesaid,\* duly elected by the inhabitants of the said parish diligently to supervise, order and direct (amongst other things belonging to their office in that behalf) that all the highways, streets and lanes in the said parish, in the county aforesaid, should be cleansed of dirt and filth, and during the whole time aforesaid, did take upon themselves the said A. B. and C. D. the said office of such scavengers as aforesaid, and that during the time they the said A. B. and C. D. were such scavengers, to wit, on the same, &c. aforesaid, and on divers other days and times as well before as afterwards, divers large quantities of dirt and filth were put, placed and laid in and upon the said ways, streets and lanes, by persons to the jurors aforesaid as yet unknown, nevertheless the said A. B. and C. D. the duty of their office in this respect neglecting, on the said, &c. and on the said other days and times respectively at, &c. aforesaid, the common highways, streets and lanes aforesaid, did not cleanse or cause to be cleansed of the dirt and filth aforesaid, but then and on the said other days and times respectively did unlawfully and contemptuously permit and suffer, and still do permit and suffer the said dirt and filth to be, lie and remain in the said common highways, streets and lanes within the parish aforesaid, in the county aforesaid, to the great damage and common nuisance, as well of all the liege subjects of our said lord the king there inhabiting and residing, as of all other the liege subjects of our said lord the king, there passing, repassing and labouring, in contempt, &c. to the evil example, &c. and against the peace, &c. (f)

Indict-  
ment a-  
gainst a  
raker for  
neglect-  
ing to  
cleanse  
the  
streets.  
(g)

That T. L. late of, &c. on, &c. and long before, was and yet is one of the rakers for the liberty of Saffron Hill, Hatton Garden and Ely Rents within the said parish, and during the whole time aforesaid, did take upon himself to execute the office of raker of the streets, lanes, alleys and passages within the same liberty; and that during the time he the said T. L. was such raker as aforesaid, to wit, on the same, &c. aforesaid, and on divers other days and times, as well before as afterwards, divers large quantities of dust, dirt,

(e) From Cro. C. C. 538. 7th edition. This indictment, and the following, are framed upon 2 W. & M. c. 8. s. 5. which directs the duty of scavengers and rakers, and consequently any breach of such obligation, will subject the offender to an indictment, unless by the terms of

the act he be otherwise punishable. See 2 Hale, 171. Bac. Abr. Indictment, E. Cro. C. C. 8 Ed. 33.

(f) *Quære*, no conclusion as in the next precedent, contrary to the form of the statute, &c.

(g) Cro. C. C. 539. 7th edition. See last precedent and note.



ashes, filth and soil, were put, placed and laid in and upon the said streets, lanes, alleys and passages by persons, to the jurors aforesaid as yet unknown, and that the said T. L. on the said, &c. and on the said other days and times respectively, at, &c. aforesaid, did unlawfully and contemptuously neglect and refuse to carry away or cause to be carried away the said dust, dirt, ashes, filth and soil, from\* and out of the said streets, lanes, alleys and passages or any of them, to the great damage and common nuisance as well of all the liege subjects of our said lord the king there inhabiting and residing, as of all other the liege subjects of our said lord the king, there going, passing and labouring, in contempt, &c. to the evil example, &c. against the form of the statute, &c. and against the peace, &c. [\*589]

## INDICTMENTS, &c. FOR NOT REPAIRING BRIDGES.

### PRELIMINARY NOTES. (a)

*As to the offence.* The repair of Bridges is subject to The of-  
nearly the same rules as affect highways. As a highway, of fence.  
common right, is to be repaired by the parish in which it  
lies, public bridges are to be amended by the county in  
which they are situate, 2 Inst. 701. 2 East, 349. 12 East,  
192., and see recital in 43 Geo. III. c. 59. And this lia-  
bility of the county is not confined to the bridge itself, but  
extends to the highway for three hundred feet on both sides  
of it, 7 East, 588. 5 Taunt. 284. 2 Dow. Rep. 1. This ad-  
dition to the bridge existed at common law, being consider-  
ed as intimately connected with it, and arising from the dif-  
ficulty of ascertaining its precise limits from the continua-  
tion of arches on each side of the river, 7 East, 596. So  
that any person or public body bound to repair a bridge,  
are also bound *primâ facie* to amend the adjacent road for  
this distance, 7 East, 588. 2 Dow. Rep. 1. 5 Taunt. 284.  
The county is, of common right, chargeable with the repair  
not only of bridges used by carriages, but such also as are  
intended for horses and foot passengers only, so that they  
are public, which they are presumed to be, 12 East, 192. 13  
East, 95. and to constitute such public bridge it is not ne-

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(a) See, in general, 2 Inst. 697, J. Bridges, and see the previous  
to 706. Bac. Ab. Bridges. Burn, J. notes on Highways.  
Bridges. Williams, J. Bridges. Dick.

[\*590] necessary that it should be always open, but if the public use it, at particular seasons, it will suffice, 2 M. & S. 262. Individuals may, however, be bound to repair either by the tenure of lands or by ancient usage, 2 Inst. 700. But, as in the case of highways, no private individual can be liable by mere prescription, without some land in respect of which he is charged, or some profit to balance his expences; though it is otherwise with bodies corporate,\* *id. ibid.* And, therefore, if a person build a bridge, which is useful to the county, they and not he are liable to the subsequent repairs, 5 Burr. 2594. 2 Bla. Rep. 685. 13 East, 220. 12 East, 192, 5 Taunt. 289, 292. So that where a miller, for his own profit, deepens the water at a ford which before was inconvenient to the public, and builds a bridge in its room, he will not be liable to repair, though he continues the water of a depth which prevents any other passage, 2 M. & S. 513. And the county or riding are even liable to repair a bridge erected by commissioners under an act of parliament, though the latter are empowered to raise tolls in order to support it, 2 East, 336. But when an act of parliament appoints trustees for taking down an old bridge and building a new one in its room, the county is not liable to repair until the purposes of the act are accomplished, and the powers it confers cease to operate, 16 East, 305. And if a bridge of a slight and incommodious nature, and evidently intended to throw a burden on the county be erected in a highway, it may be indicted as a common nuisance, and, as such be abated, 2 East, 348. Where there has been a foot bridge over a river which a particular district are bound to maintain, and the district widen and enlarge it so as to convert it into a bridge for carriages, or rebuild it on such an extended scale in another place, and make it as such a matter of public benefit, the county will be bound to support it as a carriage bridge, and the district will contribute to the repair a similar sum to that which they would have expended had it remained for the accommodation of foot passengers only, 5 Burr. 2594. 2 Bla. Rep. 685. 2 East, 353. n. a. Where a house adjoining a public bridge is in so dilapidated a condition as to obstruct the passage, the occupier, though merely tenant at will, and consequently not liable to repair as between himself and his landlord, will be compelled by reason of his possession, so far to repair as to prevent the continuance of the obstruction. In such a case, it will be improper to charge him as liable *ratione tenuræ*, though such a description will not be fatal, as it will be intended of residence and not of service, 2 Ld. Raym. 856. The mode in which the necessary sums may be raised for defraying the expences of bridges is directed by 22 Hen. VIII. c. 5. commented upon



at large by Lord Coke, 2 Inst. 700 to 706. And in order to protect the county from the charge of repairing bridges which in point of utility were not equal to the expence; the 43 Geo. III. c. 59. enacts that they shall not be bound to sustain any bridge, erected after the passing of that act, unless it be built in a substantial or commodious manner, under the direction or to the satisfaction of the county surveyor, or a person appointed by the sessions, s. 5, but the regulation does not\* extend to bridges which an individual is liable to repair by reason of tenure, or a corporation by virtue of prescription, s. 7. Those who are bound to repair bridges are also, it should seem, liable to widen them if necessary, 6 Term. R. 194. 3 Bos. & P. 354. 43 Geo. III. c. 59. s. 1 & 2. and must make them of such height and strength as to resist and be answerable to the course of the water whether it continues in its old channel or forms a new one, and they are not liable to actions of trespass if they enter any adjoining land for this purpose, or to deposit the requisite materials, Hawk. b. 1. c. 77. s. 5. [\*591]

*Modes of Prosecution.*—The 22 Hen. 8. c. 15. enacts, Modes of prosecution.  
 “that the justices or four of them at least shall have power to enquire, hear, and determine in their general sessions all manner of annoyances, of bridges broken in the highways, and to make such process and pains upon every presentment against such as ought to amend them, as the king’s bench usually doth, or as it shall seem by their discretions to be necessary and convenient for the speedy amendment of such bridges.” In the construction of this provision, it is laid down, that where the franchise in which the bridge lies has not four justices and a sessions of its own, the magistrates from the county must enquire, and if it be a county of itself, the case is not within the statute, and the common law remedies must be pursued, 2 Inst. 502. And, by the direction of the same act, where the bridge is in one jurisdiction and the persons or body corporate bound to repair, reside in another, the proceedings may be commenced in that where the nuisance arises, and process against the defendant may be afterwards awarded into any county where he may be residing. This statute is confirmed by 1 Ann, Sess. 1. c. 18. except so far as the proceedings are altered by the last provisions. This act empowers justices on presentment before them, to lay such a sum on every parish towards the repair as each has been accustomed to collect; it directs the proceedings to originate in the jurisdiction where the defect exists and provides that no certiorari shall be allowed to remove them. But this last proviso extends only to bridges which the county are bound to repair, and where a district or individual is charged or the duty comes in question, the 5th and 6th W.

& M. c. 11. allows the removal, 2 Stra. 900. In cases of aggravated neglect, or where there appears little chance of obtaining justice by preferring an indictment, the court of king's bench will grant a criminal information against the party liable to repair, 1 Stra. 180. ante 1 vol. But the more usual course, as in the case of highways, is by indictment or the presentment of a magistrate, 2 Inst. 701.

[\*592]  
Indict-  
ment.

*Indictment.*—When the liability to repair rests upon the county at large, in order to expedite the proceedings, any persons who reside within it may be made defendants, and be compelled to pay the whole fine which the court may assess, and they will be forced to resort to their remedy at law, in order by a contribution, to obtain remuneration from the county, Hawk. b. 1. c. 77. s. 3. The indictment must show what kind of bridge it is which is charged as being in decay, whether for horses, carriages, or foot passengers only, 2 Ld. Raym. 1175. It must also state that the bridge is public, and show that it is in decay, Andr. 285. where a party is bound to repair *ratione tenuræ*, that circumstance must be set forth on the record. Thus even against a lord of the manor it will not suffice to charge a prescription without these expressions, 2 Ld. Raym. 792, 804. Where this duty is charged the indictment must show the place in which the lands are situate, 2 Hale, 181. The very terms “by reason of his tenure” should then also be inserted, and the courts will not allow the words “owner and proprietor” to be substituted in their room, 1 M. and S. 439. But in presentments by the grand jury there is no occasion to show who ought to repair, it is sufficient if the defect be shown, and the bridge stated to be public, Andr. 285. The rules already laid down with respect to indictments for suffering highways to be out of repair, apply in general to bridges; except the difference in terms, which arises from the *primâ facie* liability being thrown in the latter case on the county; and, in the former, on the parish.

Plea, &c.

*Plea, &c.*—It is generally laid down that it is not sufficient for the defendants to an indictment for not repairing a bridge to plead that they are not bound to repair the whole or any part of the bridge, without showing what other person is liable, and that if merely the general issue is pleaded, the whole burden of repair will be thrown on the defendants, Hawk. b. 1. c. 77. s. 4., Bac. Abr. Bridges. But it seems from analogy to the case of highways, that this is to be understood only of indictments against the county, and not against any individuals or bodies corporate who are not of common right bound to repair, because it lies on the prosecutor specially to state the grounds on which the latter are liable, and, therefore, on the principle already mentioned, they may negative

these parts of the charge under the general issue, see ante 572, 3. 2 Saund. 159. n. 10. It is also said that where the defendants plead, whether necessarily or otherwise, that others ought to repair and traverse the charge against themselves, the attorney general may, in such case, take a traverse upon a traverse, by insisting that the defendants are bound to repair, and traversing the charge against the parties named in the plea; that, on this last traverse issue must be taken, and that the attorney general may afterwards surmise that the\* defendants are liable to repair, and that the whole matter shall be tried by an indifferent jury, &c. Hawk. b. 1. c. 77. s. 5. Though the county under the plea of not guilty, can only prove that the bridge was not a public bridge, or that it was in good condition, they may give evidence that particular individuals have been accustomed to repair, not immediately for the purpose of throwing the liability on them, but to afford ground for the jury to conclude that the bridge is not public, 2 M. and S. 262.

[\*593]

*Trial.*—No inhabitant of the county where the nuisance arises ought to sit as a juror on the trial, though, both at common law and by statute, he may be examined as a witness, 6 Mod. 307., 1 Ann. st. 1. c. 18. s. 13. And, when an impartial trial cannot be expected in the proper county from the interest of the magistrates in the cause, the indictment may be tried in the county adjoining, 6 Mod. 307., 2 Burr. 859, 860., Hawk. b. 1. c. 77. s. 6. ante 1 vol. 201. And where the bridge lies within the county of a city or town corporate, and the point in dispute is whether the inhabitants of the city or the county at large ought to repair, on a suggestion of these facts on the record, and that consequently no impartial investigation can take place in either of those jurisdictions, the venire will be awarded into the county adjacent to the larger division, 1 Stra. 177.

*Judgment.*—The mode and nature of the judgment in case of bridges is similar to that in the instance of highways, as the object of the prosecution is like that to remove the present nuisance; and, in many cases, to settle on whom the future liability rests. By 1 Ann, Sess. 1. c. 18. the fine set on the parties convicted, is not to be returned into the exchequer, but is to be applied to the repair of the bridge indicted, see ante 1 vol.

## INDICTMENTS, &c. FOR NOT REPAIRING BRIDGES.

[\*594]  
Against a  
county for  
suffering a  
public  
bridge to  
decay. (h)

Essex. That, on, &c. there was and from thence hitherto hath been and still is (i) a certain common and public bridge, commonly called D. bridge, otherwise D. beam, situate and being in the parish\* of H. in the county of Essex, in the common king's highway leading from the town of R. in the county aforesaid, towards and unto the city of L. (or to the town of ——— in the same county) being a common highway for all the liege subjects of our said lord the king (k) on foot, and with their horses, coaches, (l) carts, and other carriages, to go, return, pass, repass, ride, and labour, (m) [upon and over every year, at all times of the year, at their free will and pleasure, and that the same during all the time aforesaid, of right ought to have been used, and still of right ought to be used by all the said liege subjects for the purposes in that behalf aforesaid,] and that the said common and public bridge, on the said, &c. aforesaid, and continually from thence until the day of the taking of this inquisition, at the parish of H. aforesaid, in the county aforesaid, was and yet is, ruinous, broken, dangerous, and in great decay, for want of needful and necessary upholding, maintaining, amending, and repairing the same, so that the liege subjects of our said lord the king, in, upon, and over the said bridge on foot, and with horses, coaches, carts, and carriages could not and cannot pass and repass, ride, and labour, without great danger of their lives and loss of their goods, as they ought and were accustomed to do, and still of right ought to do; to the great damage and common nuisance of all the liege subjects of our said lord the king, upon and over the said bridge, on foot and with their horses, coaches, carts, and other carriages, about their necessary affairs and business, going, returning, passing, riding, and labouring, and against the peace of our said lord the king, his crown, and dignity.\* And that the inhabitants of the county of E. aforesaid, of right have been, and still of right are bound to re-

(h) See other precedents, Cro. C. C. 8 Ed. 313. Starkie, 675. Williams. J. Bridges, and general note ante 589 to 593.

(i) Most of the old precedents, state that the bridge was immemorially public, but this is injudicious, see ante 570.

(k) Sometimes "and his prede-

cessors" are here inserted, but if the bridge was not immemorially public, those words should be omitted.

(l) Ante 576, n. f. as to coaches.

(m) The following allegation within the brackets is usually omitted in the modern indictments.

pair and amend the said common bridge, when and so often as it shall be necessary.

[*Same as the last to the asterisk, inserting the matter within brackets,*] and that the said bridge is not within any liberty, city, or town corporate; and that it cannot be known or proved, that any hundred, riding, wapentake, city, borough, town, or parish, or certain person or body corporate or politic, ought of right to make, repair, rebuild, or amend the said bridge; and that the inhabitants of the whole county of E. aforesaid, ought to make, build, repair, and amend the said bridge, when and as often as need hath been, or occasion should or shall require the same, according\* to the form of the statute in such case made and provided; (o) yet the inhabitants of the county aforesaid have not rebuilt, amended, or repaired the said bridge, so ruinous, broken, dangerous, and in such decay as aforesaid, as they ought to have done, and still of right ought to do, but during all the time last aforesaid, permitted and suffered and still do permit and suffer the said bridge to be greatly ruinous, broken, in decay and out of repair for want of rebuilding, repairing, and amending the same.

The like with a different conclusion more formal. (n)

[\*595]

[Commencement as ante 2.] That from time whereof the memory of man is not to the contrary, there hath been, was, and still is, a certain ancient and public stone bridge, commonly called Tenbury Bridge, lying and being over the river — and in the common king's highway, leading from the market town of Bromyard in the county of Hereford, towards the market town of Cleobury Mortimer in the county of Salop, for all the liege subjects of our said now lord the king, and his ancestors, late kings and queens of this realm of England, with their horses, coaches, carts and carriages, upon and over the same bridge to go, return, ride and labour; and that one part of the same bridge lies and is situate in the parish of Burford in the county of Salop, and the other part of the same bridge lies and is situate in the parish of Tenbury in the county of Worcester; and that the said other part of the same bridge which lies and is situate in the said parish of Tenbury in the said county of Worcester, on, &c. and continually afterwards, until the day of the taking of this inquisition at the parish of Tenbury aforesaid, in the

Indictment where the bridge lies in two counties, against one of them for neglecting to repair its own division. (p)

(n) This formal conclusion seems unnecessary, as it is a presumption of law, that the county at large is bound to repair.

(o) 22 Hen. VIII. c. 5. s. 2, 3.

(p) This precedent was obtained from the crown office, Roll Hil. 29

Car. II. Where the bridge lies within two counties, each is liable to repair the part which lies within it, see, 5 T. R. 501, 2. This is an ancient form. The modern indictments are more concise, as ante 593.

said county of Worcester, was and yet is so broken, ruinous, and in decay, that the lieges and subjects of our said lord the now king upon and over the same other part of the said bridge, which lies and is situate in the said parish of Tenbury in the county of Worcester aforesaid, with their horses, coaches, carts and carriages cannot go, return, ride, and labour as they ought, and from time whereof the memory of man is not to the contrary, were accustomed to do; to the great and common nuisance of all the lieges and subjects of our said lord the king, upon and over the same part of the said bridge lying and being in the said parish of Tenbury, in the county of Worcester aforesaid, with their horses, coaches, carts and carriages, going, returning, riding and labouring, and against the peace of our said lord the king, his crown, and dignity, &c. And that the said bridge is without\* any city and town corporate: and that it cannot be known and proved, what hundred, riding, wapentake, city, borough, town, or parish, or person certain body politic, ought of right to make the said bridge; and that the inhabitants of the county of Salop aforesaid, the said one part of the said bridge which lies and is situate in the said parish of Burford in the said county of Salop, according to the form of the statute in such case made and provided, ought to make. And that the inhabitants of the county of Worcester aforesaid, the said other part of the said bridge which lies and is situate in the said parish of Tenbury in the said county of Worcester, according to the form of the statute aforesaid ought to make. Yet the said inhabitants of the county of Worcester aforesaid, the said other part of the said bridge lying and being in the said parish of Tenbury, in the said county of Worcester have not made, but the said other part of the said bridge lying and being in the said parish of Tenbury in the said county of Worcester, from the said, &c. until the day of the taking of this inquisition at the said parish of Tenbury in the said county of Worcester, have permitted and yet do permit to remain broken, ruinous and in decay, to the great and common nuisance of all the lieges and subjects of our said lord the king, upon and over the said other part of the said bridge lying and being in the parish of Tenbury aforesaid, in the the said county of Worcester, with their horses, coaches, carts, and carriages, going, returning, and labouring, and against the peace, &c.

Indictment  
against  
county for  
not main-  
taining  
and wid-  
ening a  
public

That there is a certain common public bridge called B. bridge, situate upon the river E. at the parish of T. in the said county of C., in the king's common highway, leading from the village of A. in the county of C. towards and unto the market town of I. in the said county, used for all the liege subjects of our said lord the now king and his prede-



cessors, by themselves and with their horses, coaches, carts, and carriages, to go, return, pass, ride, and travel upon and over at their will and pleasure, freely and safely, without any obstruction, hindrance, or impediment whatsoever; and that the\* said common public bridge, on, &c. and continually afterwards until the day of the taking of this indictment, was and yet is broken, ruinous, and in decay for want of due reparation and amendment of the same, and the said common public bridge during all the time last-mentioned was and yet is *over narrow*, and the battlements of the same bridge were not, nor yet are of a *sufficient height* to guard and preserve the said subjects of our said lord the king, passing, riding, and travelling upon and over the said bridge, from going and falling over the said battlements into the said river E., by reason whereof the said liege subjects of our said lord the king, necessarily going, returning, passing, riding and travelling upon and over the said common public bridge by themselves, and with their horses, coaches, carts, and carriages during all the time last-mentioned, could not nor yet can go, return, pass, ride and travel upon and over the said common public bridge, so freely and safely as they ought to do; but were and yet are greatly obstructed, stopped, and hindered in the going, returning, passing, riding and travelling upon and over the same common public bridge, and during all the time aforesaid, were and yet are in great peril, hazard, and danger of going, riding and falling over the said battlements of the said common public bridge into the said river E., and of being there suffocated, drowned, and killed in the same, and of losing and spoiling their goods and wares, to the great damage and common nuisance of all the liege subjects of our said lord the king, upon and over the said common public bridge going, returning, passing, riding and travelling, against the form of the statutes in that case made and provided, and against the peace, &c. and that the inhabitants of the county of C. of right ought to repair and amend the said common public bridge so as aforesaid being broken, ruinous, *over narrow*, and in decay, and the battlements thereof not being of a *suf-*

bridge,  
and keep-  
ing of the  
battle-  
ments of  
sufficient  
height. (g)  
[\*597]

(g) This indictment will be found in 3 B. and P. 354., 6 T. R. 194, where an objection was taken that the narrowness of a bridge could not subject the county, district, or person bound to *repair* to any prosecution, but it was holden, that as the objection was made after verdict, the discussion could not be entertained, as the jury must be

taken to have intended that the narrowness complained of arose from the fall of the battlements and the other obstructions specified; but on principle it should seem that the county is only bound to maintain what is erected, and not enlarge old bridges, or make new ones for public use. *sed vide ante* 590, 1.

Present-  
ment of a  
bridge at a  
quarter  
sessions,  
which the  
county  
ought to  
repair. (r)

[\*598]

*ficient height*, and to make the same safe and secure for the said subjects whenever and as often as it becomes necessary.

That at a general quarter sessions of the peace of our lord the king, holden at C. for the said county, on, &c. before the reverend G. P. clerk, W. B. and W. P. esquires, and others justices of our said lord the king assigned to keep the peace of our said lord the king in and for the said county, and also to hear and determine divers felonies, trespasses and misdemeanours, committed within the said county, it is presented by the oath of J. M., &c. [*the name of the grand jurors*,] good and lawful men of the said county, then and\* there sworn and charged to enquire for our said lord the king, and the body of the said county, as followeth, that is to say, G. aforesaid; the jurors for our sovereign lord the king upon their oath present, that a certain bridge over the river T., commonly called G. bridge, lying and being in the several parishes of L. and M. in the said county of G. in the king's common highway, there leading from the market town of T. in the county of G., to the market town of K. in the county of G. for and during twenty years last past, being a common king's highway for all the liege subjects of our said lord the king, with their horses, carts, and carriages, to go, pass, ride and travel at their pleasure, on, &c. was and continually from thenceforth hitherto hath been and still is in great decay, broken down and ruinous, so that the liege subjects of our said lord the king, upon or over the said bridge, with their horses, carts, and carriages, could not and cannot go, pass, ride and travel, without great danger, to the grievous damage and nuisance of all the liege subjects of our said lord the king, upon and over the said bridge going, passing, riding and travelling, against the peace, &c., and that the inhabitants of the county of G. aforesaid, the common bridge aforesaid, (so as aforesaid being in decay,) ought to repair and amend when and so often as it shall be necessary. (s) And the jurors aforesaid, on their oath aforesaid, further present, that a certain other public bridge over the river T., commonly called G. bridge, lying and being in the said county of G. in the said king's highway, leading from the said market town of — in the said county of G., to the said market town of L. in the said county of C., at the several times hereinafter mentioned, and now being a common king's highway for all the liege subjects of our said lord the king, with their horses, carts and carriages, to go, pass, ride and travel without great danger, to the grievous damage and nuisance of all the liege subjects

(r) See other precedents, 6 Wentw. 427. Burn. J. Bridges.

(s) In case of a presentment it

does not seem necessary to state who ought to repair, Andr. 285.



of our said lord the king, upon and over the said bridge going, passing, riding and travelling, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, on their oath aforesaid, further present, that the inhabitants of the said county of G., the said last-mentioned public and common bridge, (so as last aforesaid being in decay, broken down and ruinous,) ought to repair and amend when and so often as it shall be necessary.

[*Same as the indictment ante 59 3, 4, to the words "crown and dignity," and then conclude as follows.*] And that A. B. late of — esquire, by reason of his tenure of certain lands, situate, lying,\* and being in the parish of —, in the said county of —, during all the time aforesaid, was and still is bound to repair and amend the said common bridge, as often and whenever it hath been and shall be necessary.

[Commencement as ante 2.] That there is, and from time whereof the memory of man is not to the contrary there hath been a certain public and common bridge, in the parish of G. in the said county of S., over the river W., commonly called E. bridge, situate in the king's common highway, leading from the town of G. in the said county of S., to the town of F. in the same county, for all the liege subjects of our said lord the king and his predecessors, to go, return, ride and travel on horseback, and with their cattle, carts and carriages, upon, along and over, at their will and pleasure; and that the said public and common bridge, on, &c. and from thence continually afterwards, until the day of taking this inquisition, was and yet is, ruinous, in decay, and out of repair, and insufficient, and without any parapet building, erection, or defence whatever, on the sides thereof, to prevent horses and other cattle, carts and carriages, going, returning, passing and travelling upon, along and over the said bridge, from falling from thence into the said river, so that the liege subjects of our said lord the king could not during all the time last above-mentioned, nor yet can go, return, ride, and travel upon, along and over the said bridge without great danger of their lives, and loss of their horses and other cattle, carts and carriages, to the great damage and common nuisance of all the liege subjects of our said lord the king, going and returning, riding and travelling, upon, along and over the said bridge, and against the peace, &c. And that T. M. M. late of, &c. esquire, by reason of the tenure of his manor of G., in the said county, (x) ought, when and as often as it shall be necessary, to repair and amend the said bridge, and

Indictment against an individual for not repairing a bridge which he ought to do, *ratione tenuræ.* (t)

[\*599] The like against a private individual, bound *ratione tenuræ* to repair, for suffering a bridge to decay. (u) First Count, for permitting the bridge to be out of repair, and unsafe.

(t) See other precedents, 4 Wentw. 178, 188. 2 Starkie, 375. and ante 587, and as to the necessary allegations, ante 592.

Wentw. 188. 2 Starkie, 675.

(x) The words "the" and "manor" seem incorrect. See ante 592, 571, 2.

(u) See other precedents, 4

Second  
count, for  
leaving  
the para-  
pet wall  
prostrate,  
so that the  
passage is  
danger-  
ous.

[\*600]

to make the same sufficient, safe, and secure, so that the liege subjects of our said lord the king may pass, repass, ride and travel upon, along and over the said bridge, without danger of their lives, or loss of their horses, and other cattle, carts and carriages. And the jurors, &c. do further present, that there now is, and from time whereof the memory of man is not to the contrary, there hath been a certain other public and common bridge in the said parish of G. in the said county of S., over the river W., commonly called E. bridge,\* situate in the king's common highway, leading from the town of G. in the said county of S., to the town of F. in the same county, for all the liege subjects of our said lord the king and his predecessors, to go, return, ride and travel on horseback, and with their cattle, carts and carriages, upon, along and over at their will and pleasure, and that the said last-mentioned public and common bridge, on the said, &c. and from thence continually afterwards, until the day of taking this inquisition, was and yet is insufficient and without any parapet building, erection, or defence whatsoever, on the sides thereof, to prevent horses and other cattle, carts and other carriages, going, returning, passing and travelling, upon, along and over the said bridge, from falling from thence into the said river, so that the liege subjects of our said lord the king could not during the time last above-mentioned, nor yet can go, return, ride and travel, upon, along and over the said bridge, without great danger of their lives, and loss of their horses and other cattle, carts and carriages, to the great damage, &c. [*as in first count to the end.*]

Against  
the assign-  
ees of a  
corpora-  
tion for  
not re-  
pairing a  
public  
bridge  
built in  
lieu of a  
ford,  
which cor-  
poration  
ought to  
preserve.  
(y)

Somersetshire. That by a certain act of parliament, entitled "An act for making the river Avon, in the counties of Somerset and Gloucester, navigable from the city of Bath to or near Hanham's mills," made in the year 1711, it was, among other things enacted, that the mayor, aldermen, and common council of the city of Bath, in the county of Somerset, their successors, assigns and nominees, should preserve and maintain the ford, called Newton's Ford, as it then was fit and convenient for horses, waggons and other carriages to pass over, or else to build and erect at their own proper costs and expences, a bridge over the said river Avon, at or near the said Newton's Ford, fit and convenient for horses, waggons and other carriages to pass over, and keep the same in repair, as by the record of the said act of parliament, now remaining among the rolls of parliament, more fully and at large appears. And the jurors, &c. further present, that the said ford called Newton's Ford after the making of the said act of parliament, and for a long time before, and until the time

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(y) This was an indictment found A. D. 1814.

of the taking of this inquisition, was not preserved or maintained fit or convenient for horses, waggons and other carriages to pass over, and that a certain common public bridge after the making of the said act, and before the taking of this inquisition, to wit, on, &c. was built and erected by certain persons, then being assignees and nominees of the said mayor, aldermen, and common council, over the said river Avon at the said ford, called Newton's Ford, in the several parishes of Weston,\* and Newton's Saint Lee, in the said county of Somerset, but that the said bridge at the time of the building and erecting thereof, or at any time since, or at the time of the taking of this inquisition, was not fit or convenient for horses, waggons and other carriagess, to pass over. And the jurors aforesaid, upon their oath aforesaid, further present, that the said common public bridge, on, &c. and from thence continually until the day of the taking of this inquisition, was and yet is broken, ruinous, and in decay, for want of the needful reparation and amendment thereof, and during all that time was and yet is over narrow and dangerously steep, by reason whereof the liege subjects of our said lord the king, necessarily going, returning, passing and repassing, upon and over the said common public bridge by themselves, and with horses, waggons and other carriages, during all the time last aforesaid, could not, nor can go, return, pass and repass, upon and over the said common public bridge, so freely, safely and commodiously, as they, during that time of right ought to have done, and still of right ought to do, but during all that time were, and still are greatly straitened, obstructed and incommoded, and in great danger and peril, in going, returning, passing and repassing, upon and over the said common public bridge, to the great damage and common nuisance of all the liege subjects of our said lord the king, upon and over the same bridge going, returning, passing and repassing, and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. further present, that the company of proprietors of the Kennet and Avon canal navigation, Charles Dundas, late of Reading in the county of Berks, esquire, Anthony Bacon, late of the city of Bath esquire, M. C. late of, &c. together with divers other persons to the jurors aforesaid unknown, at the time of the taking of this inquisition, were and are the assignees and nominees of the said mayor, aldermen, and common council of the city of Bath aforesaid, in the said county, to wit, at the parishes aforesaid, in the said county of Somerset.

That J. W. late of, &c. on, &c. and continually from that time until the day of the taking of the said inquisition, hath been possessed and yet is possessed of a certain messuage

[\*601]

For not repairing a house near to a

common  
sewer and  
bridge,  
whereby  
danger of  
house fall-  
ing into  
sewer or  
on bridge.

(z)

[\*602]

For not re-  
pairing  
highway  
within dis-  
tance of  
300 feet  
from a  
bridge.(a)

or dwelling-house with the appurtenances, situate and being in K. aforesaid, within the borough aforesaid, and liberty thereof, and within the jurisdiction of this court, adjoining to a certain bridge called S. B., and upon a certain common fleet or sewer called P., formerly built (the same bridge\* being the king's common highway there,) and that by reason of his tenure thereof, he the said J. W. hath been obliged and ought well and sufficiently to repair and maintain the foundation of the said messuage or dwelling house, upon the fleet or sewer aforesaid, nevertheless the said J. W. for all the time aforesaid, hath suffered, and yet suffers the foundation of the said messuage or dwelling-house to lie and continue in great decay and ruin for want of due reparation thereof, by which the said messuage or dwelling-house hath been, and yet is very likely to fall down into the said common fleet and sewer, and in and upon the said bridge, to the great danger of killing the liege men and subjects of the said lord the king, passing, residing and working on, by, over and under the said bridge, and to the no small fear and grievance of them the said liege men and subjects of the said lord the king, to the evil example of others, in such case delinquent, and against the peace, &c.

[Commencement as ante 2.] That from time immemorial there was and yet is a common and ancient king's highway, leading from the market town of H. in the west riding of the county of Y. towards and unto the market town of M. in the county Palatine of L. in, through, and over the township of Q. in the west riding of the county of Y. aforesaid, used for all the liege subjects of the king for themselves, with carriages, &c. to pass, &c. And that a certain part of the said highway, at the said township of Q. in the west riding aforesaid, to wit, a certain part thereof, lying next adjoining the west end of a certain public bridge there, called T. Bridge, and within the distance of 300 feet thereof, beginning at the west end of the said public bridge, and extending from thence westwards, containing in length 45 feet, and in breadth seven yards, and a certain other part thereof, lying next adjoining to the east end of the said bridge, and within the distance of three hundred feet thereof, beginning at the east end of the said bridge, and extending from thence eastwards, containing in length 150 feet, and in breadth seven yards, on, &c. at, &c. was and yet is very ruinous and in decay for want of repair, &c. so that the subjects of the king cannot safely pass; to the common nuisance, &c. against the

(z) From 3 Lord Raym. 18.

(a) This indictment is from 7 East Rep. 588, where it was hold-  
en that the obligation to repair the  
highway for 300 yards on each side

of the bridge, always accompanied  
the duty of repairing the bridge it-  
self. See ante 589.

peace, &c. and against the form of the statutes, &c. And that the inhabitants of the west riding of the county of Y. the said common highway so as aforesaid being in decay, of right ought\* to repair and amend, when and so often as it shall be necessary. [\*603]

## INDICTMENTS, &c. FOR NOT REPAIRING WATER COURSES, &c.

[Commencement as ante 2.] That from time whereof the memory of man is not to the contrary, there was and still is a certain common and ancient water course commonly called A. leading from a certain place called the wharf in the parish of B. A. in the county of B. to a certain brew house in the occupation of one H. D. in the parish of St. A. in the suburbs of the city of O. in the said county of O. used by all the liege subjects of our said lord the king and his predecessors for the time being, inhabiting and residing in and about the said parish of St. A. to supply them with water for the use and benefit of themselves and their families, and that a certain part of the said common and ancient water course, in the parish of St. A. aforesaid, in the suburbs and county of O. aforesaid, containing in length three hundred yards, and in breadth eighteen feet, on, &c. and continually afterwards until the day of the taking of this inquisition, at, &c. aforesaid, was and still is foul, filled and choaked up with mud, weeds, rubbish, dirt and other filth, whereby the course and passage of the water which should and ought, and before that time was used and accustomed to run and flow through the same water course, was, during all the time last aforesaid, and still is so greatly stopped and obstructed,\* that the liege subjects of our said lord the king, inhabiting and residing in and about the said parish of St. A. during all the time last aforesaid, were and still are not only deprived of the benefit and advantage of the water, which, during all the time last

Against the dean and corporation of a city, for suffering a water course which usually supplied certain inhabitants with water, and which they were bound to cleanse, &c. to be so filthy as to become a public nuisance.

(b)

[\*604]

(b) See general notes ante 565 to 576. This precedent is from Cro. C. A. 377. Although this indictment probably referred only to a small stream, and the nuisance is charged as affecting persons on its banks, there can be no doubt that a person bound to repair a navigable river, might be indicted for suffering its navigation to be obstructed. A navigable river is indeed, a highway, and may be

described as such in the proceedings, Hawk. b. 1. c. 76. s. 1. It is laid down that if a water course be stopped to the nuisance of the country, and none appear bound by prescription to clear it, those who have the right of fishing, and the neighbouring towns, who have the immediate use, may be compelled to remove the obstruction. Hawk. b. 1. c. 75. s. 13.

aforesaid, should, and ought to have run and flowed, and still of right ought to run and flow through the said water course in its usual and accustomed manner, but also the said mud and other filth during all the time last aforesaid, became and were and still are very offensive and nauseous, and the said water thereby greatly corrupted, and by means thereof divers noisome and unwholesome smells on the said thirtieth day of December, in the year aforesaid, and on divers other days and times between that day and the day of the taking of this inquisition at the parish of A. aforesaid, did from thence arise, so that the air thereby was and still is greatly corrupted and infected, to the great damage and common nuisance of all the liege subjects of our said lord the king, not only there residing and inhabiting, but also going, returning, passing and repassing by the same, and against the peace of our said lord the king, his crown and dignity. And that the dean and chapter of the cathedral Church of Christ, of the foundation of lord Henry the eighth, late king of England, and the mayor, bailiffs, and commonalty of the said city of O. in the said county of O. for the time being, the said common and ancient water course so as aforesaid being foul, choaked and filled up as aforesaid, ought to empty, cleanse and scour, and until the said grievance have, from time whereof the memory of man is not the contrary, emptied, cleansed, and scoured, and have used and been accustomed to empty, cleanse, and scour, and still of right ought to empty, cleanse, and scour, when and as often as the same should or shall be necessary; (c) yet the said dean and chapter and the said mayor, bailiffs, and commonalty have not emptied, cleansed, or scoured the same common and ancient watercourse, so being foul, filled and choaked up as aforesaid, as they ought to have done, and still of right ought to do, but during all the time last aforesaid, permitted and suffered, and still do permit and suffer the said water course to be foul, filled and choaked up as aforesaid, for want of emptying, cleansing, and scouring the same.

For suffering a port to be so filled with rocks, stones, &c. as to prevent ships from entering it. Against the mayor and bur-  
[\*605]

[Commencement as ante 2.] [*Northumberland being the next adjoining county to the town of N. upon T. and county of the same town.*] The jurors of our sovereign lord the king upon their oath\* present, That from time whereof, &c. there hath been and still is a certain ancient port commonly called the port of N. upon T. used by all the liege subjects of our said lord the king and his predecessors for the time being, for the importation and exportation of goods and

(c) This seems to state the liability sufficiently as in case of an indictment against a township for

not repairing a way, ante 583, and 587.



merchandizes there; and for the benefit and advantage of trade and navigation there, and for the ships, lighters, boats, and other vessels of the liege subjects of our said lord the king, using the said port as aforesaid, safely and securely to pass and repass, and load and unload therein for the purposes aforesaid, and that the said port, on, &c. and from thence continually afterwards, until the day of taking this inquisition in a certain part thereof, containing fourteen hundred yards in length, and four hundred yards in breadth, there called S. situate and being in, &c. aforesaid, being next adjoining the county of N. and in a certain other part thereof, containing 500 yards in length, and 200 yards in breadth, there called the middle ground, situate and being in the said, &c. and in a certain other part thereof, containing 600 yards in length, and 300 yards in breadth, there called I. S. situate and being in the said, &c. was, and still is, foul, filled up, and choaked up with rocks, stones, gravel, sand, and mud, by reason whereof the water which should and ought, and before that time was used and accustomed to run and flow into and through the said port, and filled, and rendered the said port in those parts thereof, deep, commodious, and safe, for the aforesaid ships, lighters, boats, and other vessels, to pass and repass, and load and unload therein, for the importation and exportation of goods and merchandizes there, and for the benefit and advantage of trade and navigation there, was, during all the time aforesaid, and still is so greatly stopped and obstructed, and turned and confined in such narrow, winding and irregular channels, that the said port in those parts thereof became, and during all the time aforesaid was, and still is, narrow, shallow, dangerous and wholly unfit for the purposes aforesaid, so that the liege subjects of our said lord the king could not, during all the time aforesaid, nor yet can use the said port for the exportation or importation of goods and merchandizes there, or for the benefit and advantage of trade and navigation there, without the most imminent hazard of damaging their ships, lighters, boats, or other vessels, or the goods and merchandizes laden on board thereof, to the great damage and common nuisance of all the liege subjects of our said lord the king,\* using the said port as aforesaid, and against the peace of our said lord the king, his crown and dignity. And that the mayor and burgesses of the town of N. upon T. aforesaid, in the county of the town of N. upon T. aforesaid, for the time being, ought to repair, cleanse, and main-

gesses of a town corporate, bound to preserve it in navigable condition. (d)

[\*606]

(d) This precedent is from Hands' from the one given. See notes to practice, 394. It consists there of the last precedent. 12 counts, which differ only slightly

tain the said port, when and as often as it is necessary for the use and benefit of all persons importing or exporting goods there, and for the benefit and advantage of trade and navigation there. (e)

Present-  
ment by  
commis-  
sioners of  
sewers,  
for not re-  
pairing  
part of a  
wall which  
was blown  
up by the  
spring  
tides, and  
which de-  
fendant by  
reason of  
his tenure  
was bound  
to repair.  
(f)

The pre-  
sentment.

[\*607]

Essex—Middlesex and Kent to wit. Be it remembered, that by and at a special session and court of sewers, duly held for the limits of the levels of Havering, Dagenham, Ripple, Barking, Eastham, Westham, Layton, Walthamstow, Bromley, and East Marsh, and for the respective borders or confines thereof, near to the same as the same respectively is, and standing, lying, running and being within the said respective counties, and within the bounds, limits, and jurisdictions of his majesty's commissioners of sewers, duly issued under the great seal of G. B. on the nineteenth day of June in the year of our lord 1761, still in force undissipated, at the sign of the Green Man in Great I. in the said county of E. on Saturday the fifth day of January in the year of our lord 1765, before B. G. esq. chairman, S. W., J. H., J. L., C. S., T. F., J. G., W. S., G. S., E. R., M., P., A. and W. R., esquires, commissioners in the said commission named, three thereof, to wit, the said B. G., S. W., and J. K., are therein and thereby nominated and appointed of the quorum, come twelve sewers, jury for our sovereign lord the king, being duly returned and charged, &c. come upon a sewers' jury for the limits, and for the borders and confines of R. and B. levels in the said county of E. to wit, Mr. K., J. A., J. B., G. C., F. L., J. L., B. R. S., R. H., H. F., T. T., H. M., and J. P., who having, according to the tenor of the commission aforesaid, diligently enquired, as such jury, into the several matters and things belonging to the sewers within the limits of the charges of the said jurors, according to the tenor, true intent, and meaning of the said commission, the said jurors do upon their oath present in writing to the court here, as follows, that is to say, W. little level, within B. great level, Essex. The jurors aforesaid, upon their oath aforesaid present, that T. S. of, &c. and all those estates he hath of and in certain lands, called, &c. in the parish of B. in this county (of which said said lands the said T. S. now is, and for divers years last past hath\* been the owner, from time whereof the memory of man is not to the contrary, have been forced to the repair of and of right ought to have repaired one and a half rods in length, of a certain wall adjoining to and on the side of a certain creek called B. creek, in the parish of B. afore-

(e) Quære, if the obligation to repair ought not to be stated more fully, as in last precedents, and see

ante 583, 587.

(f) See form in 4 Wentw. 190.



said, and within the limits, bounds, and confines of W. level, and within the jurisdiction of this court, by reason of his and their tenure of the said lands, and that the said T. S. still of right ought to repair the same. And the jurors aforesaid, upon their oath aforesaid, do further present, that although the said wall hath been divers times in due manner presented to be out of repair, the said T. S. hath neglected and refused to repair the same, and that by and through the neglect and default of the said T. S. in that behalf, and for want of the said wall being kept in due and sufficient repair, a great deal of the said wall which so ought to be repaired by the said T. S. as aforesaid; to wit, thirty eight feet or thereabouts in length of the said wall, was blown up and washed away by a spring tide which happened on, &c. now last past. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said T. S. by reason of his tenure of his said lands in B. aforesaid, ought, at his own costs and charges, to repair, amend, and make good the said breach in the aforesaid wall.

### INDICTMENTS, &c. FOR NUISANCES TO HIGHWAYS BY ACTUAL OBSTRUCTION.

[Describe the highway as ante 593, 4, to the words "at their free will and pleasure," after which are sometimes added, "without any obstruction, hindrance or impediments," and then the indictment proceeds as follows.] Yet one J. E. late of, &c. T. R. late of, &c. [and other defendants] on, &c. with force and arms at the parish of T. aforesaid, in the county aforesaid, unlawfully and injuriously made, erected and placed, and caused to be made, erected and placed, a certain gate and gate posts in, upon, and across the said king's highway, in the parish of T. aforesaid, in the county aforesaid, between the said vill of T. and T. and unlawfully,\* and in-

For erecting and keeping shut a gate across a general highway. (g)

[\*608]

(g) See other precedents 4 Wentw. 181. 191. 198. 6 Wentw. 401, 5. Cro. C. C. 303 to 305. Cro. C. A. 373. 379. Plead. Ass. 424. 6 East, 427. Starkie, 664 to 666, and see general notes, ante 565 to 576, and precedents describing different ways and notes thereto, ante 576 to 589. *The offence of obstructing highways.* It is laid down by lord Ellenborough that every unauthorized obstruction of a highway, to the annoyance of the king's subjects, is

an indictable offence, 3 Camp. 227. Thus, where a waggoner carrying on a very extensive concern constantly suffers waggons to stand on the side of the highway on which his premises are situate an unreasonable time, he is guilty of a nuisance, 6 East, 427. 2 Smith, 424. And if stage coaches regularly stand in a public street of London, though for the purpose of accommodating passengers, so as to obstruct the regular track of carriages, the proprietor

juriously locked, fastened and chained the said gate posts so as aforesaid made, erected, and placed, and locked, fastened and chained, from the said, &c. until the day of taking this inquisition, with force and arms, at, &c. aforesaid, unlaw-

may be indicted, 3 Campb. 224. So a timber merchant occasionally cutting logs of wood in the street, which he could not otherwise convey into his premises, will not be excused by the necessity which, in choosing the situation, he himself created, 3 Campb. 230. It is even said that, "if coaches on the occasion of a rout wait an unreasonable length of time in a public street and obstruct the transit of his majesty's subjects who wish to pass through it in carriages or on foot, the persons who cause and permit such coaches so to wait are guilty of a nuisance," 3 Campb. 226. Nor is it necessary in order to fix the responsibility on the defendant to show that he immediately obstructed the public way, or even intended to do so; it seems to be sufficient, if the inconvenience result, as an immediate consequence of any public exhibition or act; for the erection of a booth to display rope dancing, and other attractive spectacles, near a public street in London, which draws together a large concourse of people, is a nuisance liable to be punished and abated, 1 Ventr. 169. 1 Mod. 76, 2 Keb. 846. Bac. Ab. Nuisance. But distributing handbills in a public way has been holden not to be illegal, 1 Burr. 516, and it may be collected that a mere transitory obstruction, which must necessarily occur, is excusable if all reasonable promptness be exerted. So that the erection of a scaffolding to repair a house, the unloading a cart or waggon, and the delivery of any large articles, as casks of liquor, if done with as little delay as possible are lawful, though if an unreasonable time were employed in the operation they would become nuisances, 3 Campb. 231. It seems to have been holden by lord Kenyon, that the existence of a nuisance for a great number of years might render it legal, Peake N. P. 91. but the contrary now appears to be settled, 7 East 199. 3 Campb. 227. ante 1

vol. 160, 1. Independently of any legal proceedings, it appears that any person may lawfully abate a public nuisance, at least if it be placed in the middle of a highway, and obstruct the passage of his majesty's subjects, Hawk. b. 1. c. 75. s. 12.

*The modes of prosecution.* Indictment, &c. appear to be the same which we have seen may be pursued for not repairing see notes ante 565 to 576. Since whatever proceedings may be adopted for a mere nonfeasance are, at least, equally applicable to an actual obstruction. The requisites also of the *indictment presentment or information* are in general similar. The same rules and principles almost invariably apply. Thus it is not necessary to state the antiquity of the road, or to set forth its boundaries. If the nuisance continue, the indictment should charge the facts accordingly, see 8 Term Rep. 142. Every proceeding, whether for nuisances arising from neglect of the duty, or encroachments on the public conveniences, must contain the words "to the common nuisance of all the liege subjects of our lord the now king," residing, passing, or using, &c, according to the facts, in its conclusion, 2 Stra. 688. Com. Dig. Indictment, G. 6. and it is said that if the indictment conclude, to the damage of *divers* subjects, it will be insufficient. Cro. Eliz. 148. A presentment by a judge or justice for an obstruction, &c. must conclude, against the form of the statute, &c. 13 East. 258, ante 9 and 10.

*Judgment.* Persons guilty of a common nuisance may be fined and imprisoned at the discretion of the court in which they are convicted. Hawk. b. 1. c. 75. s. 14. But no confinement or corporal punishment is now inflicted. The object of the prosecution is, as in the case of highways, to remove the nuisance; and, to that end alone, the sentence is in general, directed.

fully and injuriously continued, and still doth continue, whereby the liege subjects of our said lord the king, for all the time aforesaid, were not able, nor yet are able to go, return, pass and repass along and through the said common king's highway, with their cattle, carts and carriages, as they were accustomed and ought to do. To the great damage, hindrance and common nuisance of all the liege subjects of our said lord the king, going, returning, passing, and repassing in, along and through the said common king's highway, to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. do further present, that, &c. [*describe the highway as in first count.*] Yet the said J. E., T. R., &c. on the said, &c. with force and arms at, &c. aforesaid, unlawfully and injuriously locked, fastened and chained and caused to be locked, fastened and chained, a certain other gate before that time made, to certain other gate posts before that time made, erected and placed in, upon and across the said last mentioned king's highway, in, &c. aforesaid, between the vills of T. and I., and the said last mentioned gate so locked, fastened and chained to the said last mentioned gate posts, from the said, &c. until the day of taking this inquisition, with force and arms at, &c. aforesaid, unlawfully and injuriously continued, and still doth continue, whereby the liege subjects of our said lord the king for all the time last aforesaid, were not able, nor yet are able to go, return, pass and repass along and through the said last mentioned common king's highway, with their cattle, carts and carriages, as they were accustomed and ought to do, to the great\* damage, hindrance and common nuisance, &c. [*as in the first count to the end.*]

Second count, for locking and fastening a gate erected in a common public road.

[\*609]

That\* A. P. late of, &c. on, &c. with force and arms at, &c. in a certain king's highway there leading from, &c. to, &c. at a certain place there near to the south corner of a place called, &c. unlawfully and injuriously did erect and cause to be erected a certain wooden gate of the length of fifteen feet, and of the height of four feet upon and across the said king's

[\*610] The like in another form for erecting and keeping shut a gate across an highway. (h)

It is, therefore, usual, when the nuisance is stated on the proceedings as *continuing*, in addition to a fine, to order the defendant at his own costs to abate the nuisance. 2 Stra. 686. But it should seem that where a building is not a nuisance in itself, but becomes so, either by its extension or the use made of it for carrying on a noxious trade, the house itself ought not to be demolished, but only such part removed as an-

noys the public, or such injurious occupation discontinued, *id. ibid.* And where the nuisance is not charged as still existing, but as having been offensive on a day specified, no judgment need be given to abate; because it would be absurd to adjudge that to be destroyed, which does not appear to exist. 8 T. R. 142.

(h) See a precedent, 6 Went. 405, and see the precedent and note, ante 607.

highway aforesaid, and that the said A. P. the said wooden gate so as aforesaid erected and made from the said, &c. until the day of the taking this inquisition, with force and arms at, &c. aforesaid, unlawfully and injuriously did continue locked and fastened with an iron chain, and yet doth continue, by which the aforesaid king's common highway during all the time aforesaid was so obstructed and stopped up that the king's liege subjects in, by and through the same highway could not nor yet can go, return and pass with their horses, coaches, carts and carriages so freely as they ought and were wont to do, to the great damage and common nuisance, &c. [*conclusion as ante* 608.]

For obstructing a footway in defendant's close, by pulling down a stile and erecting a hedge wall, &c. across way.<sup>(i)</sup>

[\*611]

That from time whereof the memory of man runneth not to the contrary there was and yet is a certain ancient and common public foot-way leading from the town of A. in the parish of B. in the county aforesaid, through and along a certain close of land called the Ten Acres, lying and being at the parish aforesaid, in the county aforesaid, towards and unto the town of W. in the same county, used for all the liege subjects of our said lord the king and his predecessors to go, return, pass and repass on foot, in, through, along and over, every year, at all times of the year, at their free will and pleasure without any obstruction, hindrance or impediment whatsoever, and which said close of land on, &c. was, and continually from thence until the day of the taking of this inquisition hath been and still is in the possession and occupation of one J. M. late of, &c. aforesaid. And the jurors, &c. do further present, that the said J. M.\* on the said, &c. with force and arms. &c. unlawfully, wilfully and injuriously did obstruct, stop up and inclose and cause and procure to be obstructed, stopped up and inclosed, the said footway, by then and there taking down, breaking down, and prostrating and causing and procuring to be taken down, broken down and prostrated, a certain ancient wooden stile then erected, standing and being in and upon the same footway in the said close of land, and by then and there making, setting and placing, and causing and procuring to be made, set up and placed a certain large hedge in, upon and across the said footway, in the place, room and stead of the said stile, and also by then and there erecting, setting up and placing a certain erection, wall or building made of brick, mortar and other materials, in, upon and across a certain other part of the said footway in the said close there, and the said footway so as aforesaid obstructed, stopped up and inclosed with the said hedge and building, he the said J. M.

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(i) See form Cro. C. A. 373, and precedent and note, ante 607.

from the said, &c. until the day of the taking of this inquisition with force and arms at, &c. aforesaid, unlawfully and injuriously hath continued and still doth continue the same so obstructed, stopped up and inclosed, whereby the liege subjects of our said lord the king during all the time last aforesaid, could not nor can they now go, return, pass and repass in, through, along and over the same footway as they before used and were accustomed to do and still of right ought to do, to the great damage, &c. [*conclusion as ante 608.*]

That from the time whereof, &c. [*describe the highway as ante 593, 4, 607.*] for themselves and their goods, without any stoppage or hindrance by any ditches, hedges or other obstacles whatsoever, nevertheless one A. O. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in the place aforesaid, called, &c. upon the common highway aforesaid, a certain ditch and quickset hedge did make and the said ditch and quickset hedge so as aforesaid made, doth yet continue and keep, to the great, &c. [*conclusion as ante 608.*]

For digging a ditch and raising a hedge across a highway. (k)

That C. W. late of, &c. on, &c. with force, &c. at, &c. aforesaid, to wit, in a certain common and public foot-path there for all the king's subjects to pass and repass at their free will and pleasure, unjustly did erect, put and place, and cause to be erected, put and placed, eight wooden posts, with an iron chain affixed and fastened to the same posts, the said last mentioned iron chain being of the length of ten yards, and the said posts, together with the said chain, so as aforesaid affixed and fastened to the said posts, and which were erected as aforesaid, put and placed in and upon the said\* foot path from the said, &c. until the day of the taking of this inquisition, with force and arms at, &c. aforesaid, unlawfully and injuriously did continue, and yet doth continue, by which the same foot path could not, nor can they now go, return, pass and repass so freely and safely as they ought and were wont to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same foot path going, returning, passing and repassing, and against the peace, &c.

For putting and continuing posts and chains across a footway. (l)

[\*612]

That there now is, and long before, and at the time of the obstruction and nuisance hereinafter mentioned, there was a certain common and public footway on the side of a certain place called, &c. and for all the liege subjects of our said lord the king to go, return, pass and repass on foot, in and along the same at their free will and pleasure. And the

For erecting and continuing a building on a part of a common footway. (m)

(k) Burn. J. Highways.

(l) The MS. of a gentleman at the bar, see precedent and note, ante 607.

(m) This indictment was framed by a very eminent pleader now at the bar, and see the precedent and notes, ante 607, 8.

jurors, &c. do further present, that A. B. late of, &c. and C. D. late of, &c. on, &c. with force and arms at, &c. aforesaid, did unlawfully and injuriously erect and build, and cause and procure to be erected and built a great part of a certain edifice, erection and building, in and upon a great part, to wit, — square yards of the said footway, and the said part of the said edifice, erection and building so as aforesaid erected and built, in and upon the said part of the said footway, they the said A. B. and C. D. aforesaid, from the said, &c. until the day of taking this inquisition, with force and arms, at, &c. aforesaid, unlawfully and injuriously did keep, maintain and continue, *and still do keep, maintain and continue, (n)* whereby the said footway hath been for and during all the time aforesaid, and still is greatly narrowed, obstructed, and stopped up, so that the liege subjects of our said lord the king could not, during the time aforesaid, nor can they now go, return, pass, or repass on foot, in and along the said footway, as they were before used and accustomed and still of right ought to do, to the great damage and common nuisance of all the liege subjects of our said lord the king in and along the said footway going, returning, passing and repassing on foot, to the evil and pernicious example, &c. and against the peace, &c.

For obstructing a highway in various forms. (o)  
First count.  
For continuing and keeping a building on the highway.  
[\*613]

[Commencement as ante 2.] That for a long time before, &c. and until the obstruction thereof hereafter next mentioned there hath been, and from the time of such obstruction hitherto there ought to have been, and still of right ought to be a certain common and public highway, leading from the public and common street\* in the village of Battersea, in the county of Surrey, down to a certain public navigable river called the Thames, in the said county, for all the liege subjects of our said lord the king, and his predecessors, kings and queens of Great Britain and England respectively, to go, return, pass, repass, ride and labour on foot, and on horseback, and with their cattle and carriages at their free will and pleasure, and that, on, &c. at, &c. a certain building and erection of great length, breadth and height, to wit, of the length of, &c. and of the breadth of, &c. and of the height of, &c. was and before had been built, erected and fixed in and upon the said common and ancient highway, by certain persons to the jurors aforesaid as yet unknown, whereby the said common and ancient highway was obstructed and stopped up, so that the liege subjects of our said lord the king by the said way on foot and on horseback, and with their cattle and carriages, could not then go, pass, repass, &c. as they had been used

(n) See 8 T. R. 142, and ante 607.

(o) See form 4 Went. 181, and precedent and note, ante 607, 8.



and accustomed to do, and that P. G. late of, &c. the said building and erection, so as aforesaid built, erected, and placed in and upon the said common and ancient highway on the said, &c. and from thence until the day of taking this inquisition with force and arms, at, &c. aforesaid, unlawfully, and injuriously did keep, maintain and continue, and still doth keep, maintain and continue, whereby the said common and ancient highway during the time aforesaid, hath been and yet is obstructed and stopped up, so that the liege subjects of our said lord the now king, during all that time have been, and still are hindered and obstructed, in passing and repassing, riding and labouring on foot and on horseback, and with their cattle and carriages, in, through and along the said common and ancient highway as aforesaid, to the great damage, &c. [*as ante* 608.] And the jurors, &c. do further present, &c. [*describe way as in first count*] and that the said P. G. on, &c. with force and arms, at, &c. unlawfully and injuriously, did cause to be built a certain wall of a certain great length, breadth and height, to wit, of the length, &c. in and upon the said last mentioned common and public highway, and the same wall so built, &c. in and upon the said last mentioned common and public highway there as aforesaid, did unlawfully and injuriously with force and arms, keep, maintain and continue, from, &c. aforesaid, for a long time, to wit, for the space of sixty days, then next following, &c. [*conclusion as in the first count.*] And the jurors, &c. [*as in first count to the offence*] and that the said P. G. on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully and injuriously did dig up, and subvert, and did cause to be dug up and subverted, great part of the said last mentioned common and public highway, to wit, sixty yards in length, and one yard in breadth,\* and four feet in depth, of the said last mentioned common and public highway, and unlawfully and injuriously did then and there lay down and place, and cause to be thrown down, laid and placed divers large quantities of bricks, stones, and lime, to wit, &c. [*here state the quantities*] in and upon the said last-mentioned common and ancient highway, and the same part of the said last-mentioned highway so dug up and subverted, and the said bricks, stones and lime, so thrown, laid down and placed there, with force and arms, did unlawfully and injuriously keep, maintain, and continue from the same day and year last aforesaid for a long time, to wit, until the day of the taking of this inquisition, whereby, &c. [*Conclusion as in first count.* Fourth count, describing the way as a horseway, as ante 580, and the nuisance, as in first count. Fifth count, as a horseway, stating nuisance, as in the second. Sixth count, as a horseway, describing nuisance, as in third. There

Second  
count,  
building  
a wall.

Third  
count, dig-  
ging up  
and sub-  
verting  
and plac-  
ing mate-  
rials for  
building.  
[\*614]

*was also a similar set of counts, varying in the same manner, describing the road as a footway, as ante 580.]*

For taking  
up pave-  
ment of a  
street and  
erecting a  
portico,  
and nar-  
rowing  
footpath  
on side of  
a street.  
(p)

[#615]

Middlesex. That J. D. late of, &c. on &c. and on divers other days and times between that day, and the day of taking this inquisition, with force and arms, at the parish of, &c. unlawfully dug up and destroyed divers, to wit, ten yards of the pitching or pavement of a certain common and public street and king's highway there called — and at divers of those said days and times put, placed and erected certain posts or pillars there, in and upon the said common and public street and king's highway, and built and erected a certain building, erection and portico to a great height, that is to say, to the height of two feet above the adjacent part of the pitching or pavement of the said common and public street and king's highway there, and kept and continued the said posts and pillars there put, placed, and erected as aforesaid, and the same building, erection and portico, built and erected thereon as aforesaid, and the said pavement under and near the said building, erections and portico, so raised and heightened to the said height as abovementioned above the adjacent part of the pitching or pavement of the said common and public street and king's highway there as aforesaid, for a long time, to wit, from the time of putting, placing, erecting, building, raising, and heightening the same respectively, so by him done as aforesaid, until the day of taking of this inquisition, to wit, at, &c. aforesaid, whereby the same common and public street and king's highway, during the time aforesaid, was and is so much narrowed, straitened and obstructed, that the liege subjects of\* our said lord the king could not, during all the said time, nor can they now use and pass over the said common and public street and king's highway with their carts, carriages and horses, and on foot, as they were used and accustomed to do, and ought to have done and to do, but during all the time aforesaid have been and are greatly obstructed and hindered in the use and enjoyment of the said common and public street and king's highway, to the great damage and common nuisance of all the said subjects of our said lord the king, and against the peace, &c. And the jurors, &c. that the said J. D. on the said, &c. and on divers other days and times, between that day and the day of taking this inquisition, with force and arms, at, &c. aforesaid, unlawfully dug up and destroyed divers, to wit, ten yards of the pitching or pavement of a certain common and public street, and king's highway there, called Mill street, and at divers of those said days and times, put, placed and erected certain posts and pillars there, in and upon the said common and

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(p) This was a recent indictment, 37th of Geo. III. on which defendant was convicted. See also precedent and notes, ante 607 to 610.



public street, and king's highway, and built and erected a certain building, erection and portico thereon, in the said common and public street, and king's highway there, and raised and heightened the pavement under and near to the said building, erection and portico, to a great height, that is to say, to the height of two feet above the adjacent part of the pitching or pavement of the said common and public street, and king's highway there, and kept and continued the said posts and pillars, there put, placed and erected as aforesaid, and the same building, erection and portico, built and erected thereon as aforesaid, and the said pavement under and near the said building, erection and portico, so raised and heightened to the said height, as abovementioned, above the adjacent parts of the pitching or pavement of the said common or public street, and king's highway there as aforesaid, for a long time, to wit, from the time of putting, placing, erecting, building, raising and heightening the same respectively so by him done as aforesaid, until the day of taking of this inquisition, to wit, at, &c. aforesaid, whereby the same common and public street, and king's highway, during the time aforesaid, was and is so much narrowed, straitened, and obstructed, that the liege subjects of our said lord the king could not, during all the said time, nor can they now use and pass over the said common and public street, and king's highway, as they were used and accustomed to do, and ought to have done, and to do, but during all the time aforesaid have been, and are greatly obstructed and hindered in the use and enjoyment of the same common and public street, and king's highway, to the great damage and common nuisance, &c. and against the peace, &c.

That,\* &c. [*describe highway as ante 576.*] and that on, &c. at, &c. aforesaid, R. D., late of, &c. with force and arms, unlawfully and injuriously did dig up and subvert, and cause to be dug up and subverted, a great part, to wit, twenty yards in length, ten yards in breadth, and five yards in depth, of the earth and soil in and of the said highway, and did also then and there unlawfully and injuriously erect and build, and cause to be erected and built, in and upon the said highway, a great part, to wit, twenty yards in length, ten yards in breadth, and ten yards in height, of certain walls, erections and buildings made of bricks, mortar and other materials, and the said part of the said walls, erections and buildings, so, as aforesaid erected and built, he the said R. D. upon and from the said, &c. until the day of taking of this inquisition at, &c. aforesaid, with force and arms, unlawfully and injuriously did uphold, maintain and continue, and still

For buildt  
ing in par-  
on an high-  
way, and  
narrowing  
it. (g)

[\*616]

(g) See form 4 Wentw. 192, and precedent and notes, ante 607 to 610.

doth uphold, maintain and continue, whereby the said common highway on the said, &c. and during all the time last aforesaid, was, hath been, and is greatly obstructed, narrowed and straitened, so that the liege subjects of our said lord the king, in, upon, and through the said highway, during all that time, could not, nor can now, go, return, pass and repass, as they ought and were accustomed to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, going, returning, passing and repassing, in, and upon, and through the said common highway as aforesaid, with their cattle and carriages, and against the peace, &c.

*[Second count, stating the highway to be a certain lane, called W. Lane. Third count for the same nuisance to a footway. Fourth count for the same nuisance to a footway, called W. Lane. Fifth count for the same nuisance to a footway leading to the parish church, describing the way as ante 611, 12. Sixth count describing way a as footway across the grounds of the defendant, and enumerating the buildings, and stating the measure and extent as follows.]*

And the jurors, &c. do further present that the said R. D. on the said, &c. with force and arms, at, &c. aforesaid, unlawfully and injuriously did obstruct and stop up, and cause and procure to be obstructed and stopped up, a certain other public and common footway there, in, through, along and over a certain other close or piece of land there, in the possession of him the said R. D. used for all the liege subjects of our lord the king, to go, return, pass and repass, at their free will and pleasure, by then and there erecting, setting up and placing, and causing and procuring to be erected, set up, and placed in, upon, and across the said last mentioned\*  
 [\*617] footway, divers, to wit, six walls, six erections, and six buildings made of bricks, mortar and other materials, and each and every of the said last mentioned walls, erections and buildings, being of a great length, breadth and height, to wit, of the length of ten yards, of the breadth of ten yards, and of the height of ten yards, and the said last mentioned footway so as aforesaid obstructed and stopped up, he the said R. D. upon and from the said, &c. until the day of the taking this inquisition, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously hath continued and still doth continue, whereby the liege subjects of our said lord the king, during all the time last aforesaid, could not, nor can they now go, return, pass and repass, in, through, over and along the said last mentioned footway, as they before used and were accustomed to do, and still of right ought to do, to the great damage, &c. *[conclusion as ante 608.]*

That J. K. late of, &c. mariner, on, &c. at, &c. in and upon the king's common highway, there leading from a certain gate of the town of S. called E. gate to a certain gate of the said town called G. gate, erected and set up and built, and caused to be erected, set up and built, one shed, one porch, and thirteen feet of paling, and by the said porch and paling took in, encroached and stopped up, a certain part of the king's common highway aforesaid, containing in length seventeen feet and upwards, and in breadth two feet and upwards, and by the said shed took in, encroached and stopped, a certain other part of the same king's highway, containing in length eight feet and upwards, and in breadth three feet, and the same part of the said king's common highway so encroached, took in and stopped up, he the said John continued from the said, &c. to the day of taking this inquisition, to the great damage, &c. [*conclusion as ante 608.*]

For building a shed or porch projecting on highway. (r)

That long before and at the time of the committing of the nuisance and offence hereafter mentioned, there was and yet is a certain common and ancient pack and prime (t) way, leading from, &c. to, &c. for all the liege subjects of our lord the king and his ancestors, on horseback and on foot, to go, return, pass, repass, ride, labour, and drive their cattle, at their free will and pleasure, and that on, &c. at, &c. a certain hedge had unlawfully been erected and fixed across the same pack and prime way, there leading through a certain land called and known by the name of the B., by certain persons, (to the jurors aforesaid as yet unknown) whereby\* the same pack and prime way was greatly obstructed and stopped, so that the liege subjects of our said lord the king by the same way, with their horses and cattle, could not then go, return, pass and repass, ride and labour, as they had been used and accustomed to do from time immemorial; and that G. M. late of, &c. the said hedge so as aforesaid erected and fixed across the same pack and prime way, on, &c. aforesaid, and from that day until the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, voluntarily and obstinately did uphold, maintain and continue, whereby the same pack and prime way, during the time last aforesaid, was and yet is so much obstructed and stopped up, that the liege subjects of our said lord the king during all that time were and still are hindered, retarded and obstructed, in passing and repassing through the same pack and prime way

For continuing a hedge formerly erected by a person unknown across a pack and prime way whereby the same was totally obstructed. (s)

[\*618]

(r) Pleader's Assistant, 424. See also precedent and notes ante

(s) See precedent, Cro. C. C. 8 Ed. 307, and the precedent and note, ante 607, &c. and the prece-

dent for not repairing a pack way, ante 579,

(t) See explanation of these words, ante 579.

there, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same way going, returning, passing, repassing, riding and labouring, to the evil example, &c. and against the peace, &c.

For continuing a gate on an highway. (u)

That N. P. late of, &c. on, &c. and continually afterwards until the day of taking this inquisition, with force and arms, at, &c. across the king's common highway, near the lower end of a certain street or lane commonly called S. street, leading from the parish church of P. to the Salls, there often overflowed by the sea, did and still doth wilfully, voluntarily and obstinately, uphold, maintain and continue, a certain gate, posts, rails and fence, and the king's common highway aforesaid, by means thereof, hath not only unlawfully inclosed, but also obstructed and stopped up, so that the liege subjects of our said lord the king, in, by, and through the king's common highway aforesaid, could not during the time aforesaid, nor yet can go, return, pass and labour, as they ought and were wont to do, to the great damage, &c. [*conclusion as ante 608. Second count like the first, except that it described the nuisance as "a fence of posts and rails."*]

For stopping up a public footway, without stating the mode. (x)

[\*619]

[*Commencement as ante 2.*] That long before and at the time hereinafter next mentioned, there was, and from thence hitherto hath been, and still is, a certain public and common footway in the parish of M. in the county of S. leading from the village of M. in the county aforesaid, towards G. in the same county, for all the liege subjects of our said lord the king, to go, return, pass and repass,\* on foot, at their free will and pleasure, and that D. I. late of, &c. on, &c. with force and arms, at, &c. aforesaid, unlawfully and injuriously obstructed and stopped up the said footway there, and the same so unlawfully and injuriously obstructed and stopped up, from the same day and year aforesaid until the day of the taking of this inquisition, wrongfully and injuriously did keep and continue, whereby the liege subjects of our said lord the king, during all that time, were and have been greatly hindered, retarded and obstructed, in passing and repassing in and along the said footway, to the great damage, &c. [*conclusion as ante 608.*] Second stating the footway to lead from a certain public and common street in the village of M. aforesaid, to G. aforesaid. Third stating, that there is a certain public and common footway in the parish aforesaid, in the county aforesaid, for all the liege subjects &c. Fourth that there now is, and from time immemorial hath been, a certain public and common highway, leading from

Four other counts.

(u) See a form 4 Wentw. 198, and see the precedent and note, ante 607 to 610.

(x) See precedent and notes, ante 607 to 610.

the village aforesaid, to G. aforesaid, for all the liege subjects, &c. with their horses, carts and carriages, to go, &c. and that defendant afterwards, to wit, on, &c. with force and arms, at the parish aforesaid, unlawfully, &c. Fifth that long before and at the time hereinafter next mentioned, there was, and from thence hitherto hath been, and still is, a certain other public and common highway in the parish and county aforesaid, for all, &c.

[*Describe the way as ante 576.*] And that J. S. late of, &c. and T. P. late of, &c. on, &c. with force and arms, at, &c. aforesaid, dug, sunk and made, and each of them then and there dug, sunk and made, and caused and procured to be dug, sunk and made, divers large and dangerous holes, that is to say, forty holes of great depth and circumference, in, under and close to the sides of the said common footway, to wit, ten of the holes aforesaid in the same footway there, each and every of them then and there containing a great number of yards in depth and circumference, to wit, three yards in depth and ten yards in circumference, ten other holes, part of the said holes first above mentioned, under and beneath the said common footway there, each hole thereof then and there containing respectively another great number of yards in depth and circumference, to wit, three yards in depth and ten yards in circumference, and the residue, that is to say, twenty other of the holes first mentioned contiguous and close to the sides of the same common footway there, and in no wise secured or fenced round every hole of the said residue of the said holes then and there,\* containing another great number of yards in depth and circumference, to wit, three yards in depth and ten yards in circumference, and that they the said J. S. and S. H. then and there did, and each of them then and there did, unlawfully, wrongfully, wilfully and injuriously, continue and permit to be so kept open the said several holes above mentioned as aforesaid, in nowise secured or fenced round for a long space of time, to wit, from the same day and year aforesaid, until the day of the taking of this inquisition, and the same still remains so kept open, by reason whereof the liege subjects of our said lord the king, during all the time last aforesaid could not, nor can they now go, pass, repass and travel on foot, along, in and through the same common footway, without very great danger of losing their lives and limbs in passing therein, to the very great danger, terror, damage and common nuisance of all his said majesty's subjects, passing, repassing and travelling on foot, in and along the same way there, and against the peace, &c.

For making holes in, under, and on the sides of common footway.  
(y)

[\*620]

(y) Cro. E. C. 8th Ed. 314. Cro. ante 607 to 610.  
C. A. 379, and precedent and notes,

For digg-  
ing a hole  
in a public  
street. (z)

That A. F. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in a certain street, being the king's common highway, there called, &c. (used for all the king's subjects, with their horses, coaches, carts and carriages, to go, return, ride, pass, repass and labour, at their free will and pleasure,) unlawfully and injuriously, did dig, and cause to be dug, a certain pit, containing in circumference fifteen feet, and in depth thirteen feet, and the same pit so as aforesaid dug, and caused to be dug, in the street and highway aforesaid, from the said, &c. until, &c. at, &c. aforesaid, unlawfully and injuriously did continue, by reason whereof, the king's subjects, during the time aforesaid, could not go, return, pass, repass, ride and labour, with their horses, coaches, carts and carriages, in, by and through the same street and highway as they were wont and ought to do, without great peril and danger of their lives, to the great damage, &c. [*as ante* 608.]

For digg-  
ing a  
horse  
pond, and  
erecting a  
cistern in  
a common  
passage.  
(a)

[\*521]

That W. C. late of, &c. on, &c. with force and arms, at, &c. aforesaid, to wit, in a certain passage and common footway there, called Boar's-head Yard, (being the king's common highway, used for all the king's subjects, to go, return, pass and repass on foot, at their free will and pleasure,) unlawfully and injuriously, did dig and make, and cause to be dug and made, a certain horse-pond, containing in length twelve feet, in breadth six feet, and in depth six feet; and that the said W. C. on the said, &c. with force and arms, at, &c. aforesaid, to wit, in the same passage and common highway, unlawfully\* and injuriously, did erect, put and place, and cause to be erected, put and placed, a certain wooden cistern, containing in length five feet, and in breadth twenty inches; and that the said W. C. the said horse-pond, so as aforesaid dug and made, and also the said wooden cistern, so as aforesaid erected, put and placed, from the said, &c. until the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, unlawfully and injuriously did continue, and yet doth continue; by means whereof the same passage and common footway, for and during the whole time aforesaid, was so obstructed, and was and yet is so dangerous, that the liege subjects of our said lord the king, through the same passage and common highway, could not, nor yet can go, return, pass and repass, so freely and safely as they ought and were wont and accustomed to do, and still of right ought to do, to the great damage, &c. [*conclusion as ante* 608.]

(z) Cro. C. C. 8th Ed. 303, 7th Ed. 524. See also precedent and notes, ante 608 to 610.

(a) Cro. C. C. 8th Ed. 304. See precedent and note, ante 608 to 610.



[*Describe the highway as ante 576.*] And the jurors, &c. further present, that there now is, and from time whereof, &c. there hath been a certain watercourse running and flowing through and under a certain bridge, called A. bridge, to wit, at, &c. aforesaid. And the jurors, &c. do further present, that A. B. late of, &c. aforesaid, and C. D. late of, &c. aforesaid, on, &c. at, &c. aforesaid, did unlawfully cut into, dig away, and remove, and cause to be cut into, dug away, and removed, great part of a certain bank, dam, or mound of earth, then and there lying and being on the east side of the said watercourse near to the said bridge, and between the said watercourse, and a certain ditch or watercourse on the south side of the said highway, and unlawfully and injuriously kept and continued, and caused to be kept and continued, the said part of the said bank, dam, or mound of earth, so cut into, dug away, and removed as aforesaid, for a long space of time, to wit, from thence until the day of taking this inquisition, whereby divers large quantities of water, during the time aforesaid, to wit, on, &c. and on divers other days, &c. were diverted and turned from the usual and accustomed course and channel, and ran and flowed from and out of the said watercourse into the said ditch, on the south side of the said highway, and from thence into, upon, and over the said highway, and greatly overflowed, damaged, and spoiled the same, so that the liege subjects of our said lord the king could not, during the times last aforesaid, go, return, pass, ride, and labour, in and upon, over and along, the said highway, on foot, or with horses, carts, or carriages, as they were before used and accustomed to do, without great danger of their lives, and the loss of their goods; to the great damage, &c. [*conclusion as ante 608.*]

Indictment for cutting a gap in a bank, which confined water in a water course, whereby the water overflowed a highway adjoining, and injured the road.

That\* A. H. late of, &c. and H. A. late of, &c. on, &c. with force and arms, at, &c. in a certain common street there, being the king's highway, called P. street, (used for all the king's subjects, with their horses, coaches, carts, and carriages, to go, return, ride, pass, repass, and labour, at their free will and pleasure,) unlawfully and injuriously did pour out, discharge, place, and leave, and cause to be poured out, discharged, placed, and left, a great quantity of dung, human excrement, and other filth, by reason of which divers hurtful and unwholesome smells and stench from the said dung, excrement, and other filth, did then and there arise, and thereby the air there became and was then and there greatly corrupted and infected, to the great damage, &c. [*conclusion as ante 608.*]

Against night men for laying soil in the streets. (b) [\*622]

(b) Cro. C. C. 8th Ed. 303. See precedent and note ante.  
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For shoot-  
ing dirt in  
a footway.  
(c)

That F. F. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in a certain common footway there, leading from that part of M. green, which is in the parish aforesaid, in the county aforesaid, towards and unto the parochial church of the same parish, in the said county, did unlawfully and injuriously put, place, and lay, and cause to be put, placed, and laid, two cart loads of dirt and other filth, and the said dirt and filth, in the said footway, from the said, &c. until the day of the taking of this inquisition, at, &c. aforesaid, unlawfully and injuriously did permit and suffer to be and remain, by reason whereof the footway aforesaid, during the time aforesaid, was, and yet is, greatly obstructed and straitened, so that the liege subjects of our said lord the king, through the same footway, could not, during the time aforesaid, nor yet can go, return, pass, repass, and labour, as they ought and were wont to do, to the great damage, &c. [*conclude as ante 608.*]

For laying  
rubbish in  
a square,  
whereby a  
coach was  
overturn-  
ed, stating  
death of a  
party in  
conse-  
quence.  
(d)

[\*623]

That C. P. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in a certain public square, and the king's common highway there, called L. fields, did, unlawfully and injuriously put, place, and lay, and cause and procure to be put, placed, and laid, divers large quantities of dirt, earth, rubbish, soil, and bricks, to wit, &c. [*state the quantities,*] and the said dirt, earth, rubbish, soil, and bricks, in the said square and king's common highway there, from the said, &c. in the year aforesaid, until the day of the taking of this inquisition unlawfully, and injuriously did continue, and still doth continue, without any inclosure or fence whatsoever, and\* without any light hung out or placed in the night time, to prevent the damage that might happen to the subjects of our said lord the king, with their horses, carts, and other carriages, passing and repassing through the said square and king's highway, whereby the liege subjects of our said lord the king could not, during the time last aforesaid, pass and repass through, and along the said square and king's highway, without great danger of their lives, and the loss of their goods. And the jurors, &c. do further present, That on, &c. about the hour of ten, in the night of the same day, at, &c. aforesaid, one J. S. then servant to one S. T. widow, was driving two horses, drawing a certain coach, through and along the said square and king's common highway, (in which coach the said S. T. then and there was) and the said S. T. in so passing through and along the said way in the said coach, was then and there, by means of such dirt, earth, rubbish, soil, and bricks, so put, placed, and laid as aforesaid, overturned and prostrated, and

(c) Cro. C. C. 7th ed. 532.  
and see precedent and notes,  
ante 606 to 610.

(d) Cro. C. C. 8th ed. 315.  
and precedent and note, ante 606  
to 610.

thereby so greatly hurt, bruised, and wounded, that she the said S. T. afterwards, to wit, on, &c. at, &c. aforesaid, of such hurts, bruises, and wounds, died; and also by means of such overturning the said coach as aforesaid, as well the said J. S. who drove the said coach, as also J. H. esquire, G. T. M. the wife of M. B. esquire, and S. J. spinster, then being in the said coach, were put in great danger of losing their lives, or of receiving some bodily hurt, to the great damage not only of the said T. S., J. H., G. T., M. B., and S. J., but also to the great damage and common nuisance of all the liege subjects of our said lord the king. with their horses, carts, and other carriages, in, by, through, and along the said square and king's common highway, during the time aforesaid, going, returning, passing, riding, and labouring, and against the peace, &c.

That on, &c. there was, and from thence hitherto there hath been and still is, a certain common way, leading from the town of B. in the said county of S. to the parish church of B. aforesaid, there, for all the inhabitants of the parish of B. aforesaid, to go, return, pass and repass, on foot and on horseback, and with their coaches and carriages, for the attending and hearing of divine service in the same parish church, and that H. F. late of, &c. on, &c. and on divers other days and times, as well before as afterwards, with force and arms, at, &c. aforesaid, in and upon the said way there, unlawfully and injuriously put, placed, and laid, and caused and procured to be put, placed and laid, divers large quantities of dung, muck, straw and rubbish, that is to say, twenty cart\* loads of dung, twenty cart loads of muck, twenty cart loads of straw, and twenty cart loads of rubbish, and the said dung, muck, straw and rubbish, so put, placed, and laid as aforesaid, continually from the said, &c. until the day of the taking of this inquisition, hath permitted to be and remain, and still doth permit to be and remain, and obstinately continued, and still doth continue the same, in and upon the said way there, by reason whereof the said way hath, for all the time last aforesaid, been straitened and obstructed, inso-much that the said inhabitants of the said parish could not, during all the time last aforesaid, nor can they now go, return, pass and repass, from the said town of B. to the parish church aforesaid, in, along, and through the said way there, as they ought and were used and accustomed to do, and still of right ought to do, but during all the time last aforesaid were, and still are greatly obstructed and hindered in the use and enjoyment of the said way there, to the great grievance and common nuisance of all the inhabitants of the said parish,

For laying  
dung and  
rubbish  
in a carri-  
age way to  
a church,  
and digg-  
ing up the  
pavement.  
(e)

[\*624]

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(e) Cro. C. C. 389. see precedent and notes, ante 606 to 610.

Second  
count for  
digging up  
the pave-  
ment.

Third  
count for  
destroying  
the pave-  
ment, &c.  
stating the  
place to be  
a public  
highway,  
&c.

[\*625]

going, returning, passing, and repassing, in, along, and through the said way there, and against the peace of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, That the said H. F. afterwards, to wit, on, &c. and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, unlawfully and injuriously dug up, rooted up, and destroyed, and caused and procured to be dug up, rooted up, and destroyed, divers, to wit, ten yards of the pitching or pavement in the said way, so leading from the said town of B. to the parish church of B. aforesaid, whereby the said way, during all the time last aforesaid, became and was, and still is broken, ruinous, miry, deep, and in such decay, that the said inhabitants of the said parish of B. during all the time last aforesaid could not, nor can they now go, return, pass, repass, and ride, with their horses and carriages, in, through, over, and along the said way there, as they were used and accustomed to do, and still of right ought to do, but ever since the said, &c. have been and are greatly obstructed and hindered in the use and enjoyment of the same way, to the great damage and common nuisance, &c. [*as in the first count.*] And the jurors, &c. [*describe the way as a public general way, from the town of B. to the town of C. as ante 576.*] and that the said H. F. afterwards, to wit, on the said, &c. and on divers other days and times, between that day and the day of the taking of this inquisition, at, &c. aforesaid, unlawfully and injuriously dug up, rooted up, and destroyed, and caused and procured to be dug up, rooted up, and destroyed, divers, to wit, ten yards\* of the pitching or pavement of the said king's highway, and put, laid, and placed, and caused and procured to be put, laid, and placed, divers large quantities of dung, muck, straw, and rubbish, to wit, &c. in and upon the said last mentioned way there, and the said last mentioned dung, muck, straw, and rubbish, so put, laid, and placed as aforesaid, continually from the said, &c. until the day of the taking of this inquisition, hath permitted to be and remain, and still doth permit to be and remain in and upon the said king's highway there, whereby the said king's highway, during all the time last aforesaid, hath been and still is so ruinous, wet, deep, and miry, that the liege subjects of our said lord the king, during all or any of the time last aforesaid, could not, nor can they now travel, pass and repass, with their cattle and carriages, in, through, over, and along the said king's highway there, as they before were used and accustomed to do, and of right ought to have done, and still of right ought to do, but during all the time aforesaid were, and still are, wrongfully and injuriously obstructed and hindered in the use and enjoyment

of that way, to the great damage, &c. [*conclusion as ante 608.*]

That A. O. late of, &c. on, &c. and on divers other days and times, as well before as afterwards, with force and arms, at, &c. in and upon the king's common highway, there leading from, &c. unto, &c. divers great pieces of timber, put and placed, and caused to be put and placed, and the same great pieces of timber, so as aforesaid put and placed, from the aforesaid, &c. until the day of exhibiting this information, in and upon the king's common highway aforesaid, to be, lie, and remain, hath permitted, and doth still permit, to the great damage, &c. [*conclude as ante 608.*]

For laying timber or other obstructions in the highway. (f)

Middlesex. That K. L. late of, &c. labourer, on, &c. in, &c. with force and arms, at, &c. aforesaid, to wit, in the common and public street, there called C. street, (the same street then and there being the king's common highway, there used by all the liege subjects of our said lord the king, with their horses, coaches, carts, and carriages, to go, return, pass, repass, ride, and labour, at their free will and pleasure,) (h) unlawfully and injuriously did put and place, and cause, and procure, to be put and placed, two carts for the selling and exposing to sale of pease, in the shells, and the said carts, in the same street, and common highway, on, &c. aforesaid, for the space of three hours, at, &c. aforesaid, unlawfully and\* injuriously did cause to be and remain, whereby the said street, and common highway, during the time last aforesaid, was very much obstructed and straitened, so that the liege subjects of our said lord the king, could not through the same street and common highway, during the time in that behalf aforesaid, go, return, pass, repass, labour, ride and labour, with their horses, coaches, carts and carriages, as they ought, and were wont and accustomed to do, to the great damage, &c. [*Conclusion as ante 608.*]

For placing two carts for selling goods in a public street. (g)

[\*626]

That H. F. late of, &c. and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at, &c. in a certain street there, called L. street, being the king's common highway, there used for all the king's subjects, with their horses, coaches, carts, and carriages, to go, return, ride, pass, repass, and labour, at their free will and pleasure, unlawfully and injuriously did put and

For suffering empty drays to remain in a street, whereby passage was obstructed. (i)

(f) See form, Burn. J. Highways, and precedent and note, ante 606 to 610.

(g) Cro. C. C. 8th ed. 305. See 3 Campb. 224, 231. 6 East, 427. See also precedent and notes, ante 606 to 610.

(h) This is not necessary.

(i) Cro. C. C. 8th ed. 304. That this is an indictable offence, see 3 Campb. 231, 6 East, ante 427 n. a. See precedent and note ante 606 to 610.

place three empty drays, and did then, and on the said other days and times, there unlawfully and injuriously permit and suffer the said empty drays respectively to be and remain, in and upon the the king's common highway aforesaid, for the space of divers hours, to wit, for the space of five hours on each of the said days, whereby the king's common highway aforesaid, then, and on the said other days, for and during all the said times, on each of those days respectively, was obstructed and straitened, so that the liege subjects of our said lord the king could not then, and on the said other days and times, go, return, pass, repass, ride, and labour, with their horses, coaches, carts, and other carriages, in, through, and along the king's common highway aforesaid, as they ought and were wont and accustomed to do, to the great damage, &c. [*conclusion as ante* 608.]

For letting a waggon stand in public street, so as to incommode passengers. (j)

[\*627]

That A. B. late of, &c. before and at the times hereafter mentioned, was, and still is, a proprietor of divers waggons for conveyance, for hire, of goods of others to and from E. and being such proprietor, he, with force and arms, on, &c. and on divers other days and times between that day and the eighth of January, 1803, in the parish of, &c. in the city and county aforesaid, without just cause or excuse, but wrongfully and unjustly, did cause and permit divers, to wit, twenty waggons to stand and remain for a long time, to wit, ten hours on each day, before his warehouse, situate in a public\* street and highway, called ———, within such parish, city, and county, and divers cumbrous and other parcels, which had been conveyed, or were intended to be conveyed, in such waggons, to lie during such time scattered about such public street, to the great hindrance, impediment, and annoyance, of all his majesty's subjects passing and repassing such street, &c. [*conclusion as ante* 608.] The second count charged that the defendant permitted divers waggons to stand in the said public street and highway, and there to remain before his warehouse for a long and unreasonable time, to wit, &c. by which the king's subjects were, during that time, much impeded and obstructed, &c. [There was a third count for similar nuisances from the eighth of January to the day of the presentment.]

For baiting a bull in a market place, being the king's highway. (k)

That S. J. late of, &c. and divers other persons to the jurors aforesaid unknown, on, &c. with force and arms, at, &c. aforesaid, in a certain common and public street there, called the Market Place, the same street then and there being,

(j) See 6 East, 427, where this was held an indictable offence, 3 Campb. 224, 231, Cro. C. C. 8th Ed. 395, and the precedent and

note, ante 606 to 610.

(k) See form 4 Wentw. 213, and the precedent and note, ante.

and still being, the king's common highway, used by all the liege subjects of our said lord the king and his predecessors, with horses, coaches, carts, and carriages, and on foot, to go, return, pass, repass, ride and labour at their wills and pleasures, unlawfully and injuriously did lead, drive, put, and place, and did cause and procure to be led, driven, put and placed, a certain bull, and the same bull did then and there bait with dogs, and the same bull so baited with dogs in the same street and common highway, on, &c. aforesaid, unlawfully and injuriously did cause to be and remain for a long space of time, to wit, for the space of three hours, whereby the said street and common highway, during the time last aforesaid, was very much obstructed, so that the liege subjects of our said lord the king could not through the said street and common highway, during the time last aforesaid, go, return, &c. with horses, &c. as they ought and were wont to do, to the great damage, &c. [*conclusion as ante* 608.]

[*Commencement as ante* 2.] That B. R. late of, &c. on, &c. at, &c. in a certain common and public street and highway there, for\* all the liege subjects of our said lord the king, on foot, with their horses, coaches, carts and carriages, to go, return, ride, pass, repass and labour, at their free will and pleasure, wrongfully, unlawfully and injuriously, did fire certain fire-works, that that is to say, two fire-works, called Roman candles, whereby the said public street and common highway was then and there greatly obstructed, and divers liege subjects of our said lord the king then and there standing, being, passing and repassing, in and along the said public street and common highway, were then and there greatly terrified and put in great peril and danger of bodily harm, and could not then go, return, pass and repass, on foot, and with their horses, coaches, carts and carriages, in and along the said public street and common highway, as they ought to have done, and had been used and accustomed to do, and otherwise might and would have done, to the great terror, alarm, danger and common nuisance of all the liege subjects of our said lord the king, in and near the said public street and highway inhabiting and residing, and of all other the liege subjects of our said lord the king, there standing, being, passing, in contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c. and

On 9 and  
10 W. III.  
c. 7. for  
letting off  
fire works  
in a pub-  
lic street.

(1)

[\*628]

(1) Though the 9 and 10 W. III. c. 7 in some of its clauses provides specific penalties for the improper exhibition of fire works, as that act declares it in its first section to be a common nuisance, there is no doubt but that it may be indicted as such,

even under the statute 4 T. R. 202. 1 Saund. 135, n. 4. Cowp. 650. 2 Burr. 863. ante 135, n. 4. And there can be no doubt, that the party offending may be indicted at common law, and the statute is only cumulative in its operation.



Second  
count.

against the form of the statute, &c. And the jurors, &c. do further present, that the said B. R. on the said, &c. at, &c. aforesaid, in a certain other common and public street and highway there, for all the liege subjects of our said lord the king, on foot, and with their horses, coaches, carts and carriages, to go, return, ride, pass and repass, and labour, at their free will and pleasure, wrongfully, unlawfully and injuriously, was aiding, assisting, in firing certain fire-works, that is to say, two other fire-works, called Roman candles, whereby the said public street and common highway was, then and there, greatly obstructed, and divers liege subjects of our said lord the king, then and there standing, being, passing and repassing, in and along the said last mentioned public street and common highway, were then and there greatly terrified, and put in great peril and danger of bodily harm, and could not then go, return, pass and repass, on foot, and with their horses, coaches, carts and carriages, in and along the said last mentioned public street and common highway, as they ought to have done, and had been used and accustomed to do, and otherwise might and would have done, to the great terror, &c. [*as in first count.*]

Third  
count.

And the jurors, &c. do further present, that the said B. R. on, &c. aforesaid, at, &c. aforesaid, in a certain other common and public street and highway there, wrongfully, unlawfully and injuriously, did fire certain other fire-works, whereby the said last mentioned public street and common highway was, then and there greatly obstructed, and divers liege subjects, &c. [*as in first count to the end.*]

For driv-  
ing cattle,  
&c. killing  
them, and  
leaving  
their  
skins, &c.  
to corrupt  
near New-  
gate mar-  
ket.

[\*629]

That\* W. S. late of, &c. on, &c. and on divers other days and times, between that day and the day of taking of this inquisition, with force and arms, at London, (that is to say) at the parish of Christ Church, Newgate Street, in the ward of Farringdon within, in London aforesaid, in a certain house and building there, in the occupation of the said W. S. and situate and being in a certain public street and common highway there, called Warwick Lane, and near divers other public streets and common highways there, and also near the dwelling houses of divers of the liege subjects of our said lord the king, there situate, unlawfully and injuriously, did kill, slaughter, and caused to be killed and slaughtered, divers oxen, cows, calves, sheep, lambs and swine, to wit, five thousand oxen, &c. &c. and the excrement, blood, offal, entrails and other filth from the said oxen, cows, calves, sheep, lambs and swine, on the same day, and in the year aforesaid, and on the other days and times aforesaid, there, unlawfully and injuriously, did permit and suffer to be, and remain in and near the said house and building, and to run from and out of the said house and building,



into and along the said public street and king's common highway, called Warwick Lane, and the horns, hides, skins and offal of the said oxen, cows, calves, sheep and lambs, he, the said W. S. on the, &c. aforesaid, and on the other days and times aforesaid, there unlawfully and injuriously did put and place, and cause and procure to be put and placed, in the said public street and king's common highway last aforesaid, and the said horns, hides, skins and offal, to be and remain in the public street and king's common highway last aforesaid, and then and on the other days and times aforesaid, there wrongfully and injuriously did permit and suffer. And the said oxen, cows, calves, sheep, lambs and swine, he, the said W. S. on, &c. aforesaid, and on the other days and times aforesaid, there unlawfully and injuriously did drive, and cause and procure to be driven, in, along and through the public street and king's common highway aforesaid, and towards and into the said house and building, for the purpose of being slaughtered there, by means of which said premises divers noisome and offensive smells and stench from the said excrements, blood, offal, entrails and filth, on, &c. aforesaid, and on the other days and times aforesaid, did there arise, and the air there became, and was thereby greatly corrupted and infected, and the public streets and king's common highway aforesaid, during the times aforesaid, by means of putting and placing the horns, hides, skins and offal, of the said oxen, cows, calves, sheep and lambs, as aforesaid, and also by means of driving and causing the said oxen, cows, calves, &c. to be driven as aforesaid, were greatly obstructed and straitened, so that the liege subjects of our said lord the king, during the\* time aforesaid, could not, nor can they yet go, return, pass, ride and labour, with their horses, carts and carriages, and on foot, in and along the public streets and king's common highways aforesaid, so freely as they wont, and by right ought to do; to the great damage and common nuisance of all the liege subjects of our said lord the king, there inhabiting, residing and being, and in and along, and through the said public streets and king's common highways, going, returning, passing and re-passing, riding and labouring, and against the peace of our said lord, &c. And the jurors, &c. do further present, that the said W. S. on, &c. and on divers other days and times, between that day and the day of taking this inquisition, with force and arms, at, &c. aforesaid, in a certain house of him the said W. S. situate and being in a certain public street and common king's highway there, called Warwick Lane, and also situate near divers other public streets and common king's highways there, and near the dwelling houses of divers liege subjects of our said lord the king, did unlawfully and

[\*630]

Second  
count, for  
the offen-  
sive smell,  
&c. mete-  
ly.

Third  
count, for  
the ob-  
struction  
of the  
highway  
only.

[\*631]

injuriously kill and slay, and cause to be killed and slain, divers, to wit, &c. and the excrement, blood, entrails, offal and other filth, from the said animals respectively coming and issuing, did then and there, on the said several days and times respectively, there cause and permit to be and remain in the said house, and near to the same, for a long time, to wit, for the space of five hours on each of those days respectively, whereby divers noisome and unwholesome smells and stenchs from the excrement, blood, offal, entrails and other filth, coming and issuing from the said animals, then and on the said other days and times respectively there did arise, and the air thereby was greatly corrupted and infected; to the great damage and common nuisance, not only of all the liege subjects of our said lord the king near there inhabiting and dwelling, but also of all other liege subjects of our said lord the king, in, by and through the said public street, called Warwick Lane, and in, by and through the said other public streets and common king's highway near there, going, returning, passing, repassing and labouring; to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said W. S. on, &c. aforesaid, and on divers other days and times between that day and the day of taking this inquisition, with force and arms, at, &c. aforesaid, in a certain public street and common king's highway there, called Warwick Lane, used for all the king's subjects on foot, and with their horses, coaches, carts and carriages, to go, return, pass and repass, ride and labour, at their free will and pleasure, unlawfully and injuriously, did pour out, discharge, put, place and leave, and cause and procure to be poured out, discharged, placed and\* left, divers large quantities of the blood, offal, excrement, entrails and other filth of divers oxen, cattle, sheep, swine and other animals, and divers large quantities of the hides, horns and skins, of cattle, oxen and other animals, and did then, and on the said other days and times, there unlawfully and injuriously permit and suffer the said quantities of blood, offal, excrement, entrails and other filth, and the said horns, hides and skins, to be and remain in and upon the said public street and common king's highway, called Warwick Lane, for a long space of time, to wit, for the space of ten hours on each of the said days respectively, whereby the said public street and king's common highway aforesaid, then and on the said other days, for and during all the said space of time, on each of those days respectively, was obstructed and straitened, so that the liege subjects of our said lord the king could not then, and on the said other days and times respectively, go, return, pass, repass, ride and labour, with their horses, coaches, carts and other carriages, in, through

and along the said public street and common king's highway aforesaid, called Warwick Lane, as they ought and were wont and accustomed to do; to the great damage and common nuisance of all his majesty's liege subjects, going, returning, passing, repassing, riding and labouring, in, through and along the said public street and common king's highway; to the evil, &c. and against the peace, &c. And the jurors, &c. do further present, that the said W. S. on, &c. aforesaid, and on divers other days and times between that day and the day of taking this inquisition, with force and arms, at London aforesaid, in the parish and ward aforesaid, in a certain public street and common king's highway there, called Warwick Lane, used for all the king's subjects, on foot, and with their horses, coaches, carts and carriages, to go, return, pass, repass and labour, at their free will and pleasure, and injuriously did drive, and cause to be driven, divers, to wit, &c. on each and every of the said days, in and along the said public street and king's common highway, called Warwick Lane, to a certain house of the said W. S. there, for the purpose of the same being slaughtered there, and did also, on the day and year aforesaid, and on each and every of the said other days, wrongfully and injuriously put and place, and cause and procure to be put and placed, divers, to wit, ten carts in the said public street and common king's highway, for the purpose of gathering, collecting and receiving the horns, hides, skins, excrements, offal, and other filth of the said animals, after the same had been slaughtered, and the said last mentioned carts, in the same street and king's common highway, on the day and year aforesaid, and on each and every of the said days and times,\*

Fourth  
count, for  
driving  
cattle, &c.

wrongfully, injuriously, did permit and suffer to be and remain for a long space of time, to wit, for the space of five hours on each and every of the said days; by means of which said driving of the said oxen, cows, calves, sheep, lambs and swine, for the purpose aforesaid, and also of the said putting and placing the said carts in the said public street, and the suffering them to remain there for the space of time aforesaid, the said public street and common king's highway aforesaid, then and on the said other days, for and during all the said time, and each of those days respectively, was obstructed and straitened, so that the liege subjects of our said lord the king could not then, and on the said other days and times respectively, go, return, pass, repass, ride and labour, with their horses, coaches, carts and other carriages, in, through and along the said public street and common king's highway aforesaid, called Warwick Lane, as they ought and were wont and accustomed to do; to the great damage and common nuisance, &c. [*as in third count.*]

[\*632]

## INDICTMENTS, &c. FOR NUISANCES TO WATER COURSES, &c. BY ACTUAL OBSTRUCTION.

Indictment for making embankments and narrowing the river Thames.

(m)

[\*633]

Kent. [*Commencement as ante 2.*] That the river of Thames is, and from time whereof, &c. was an ancient navigable river and common\* king's highway, for all the liege subjects of our lord the king, with their ships, vessels, boats and craft, to pass, repass and navigate, at their free will and pleasure, to wit, at, &c. and that J. R. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in the said navigable river and common king's highway there, in and upon the bed and soil thereof, and in the stream and waterway thereof, unlawfully, wilfully, knowingly and injuriously, did erect, raise and place, and cause to be erected, raised and placed, a certain embankment, composed of wood, chalk, gravel, earth, rubbish, stones and other materials, and being of great length and width, to wit, of the length of one hundred feet, along the said river and common king's highway there, parallel with the banks thereof, and of the width of eighty feet across and athwart the stream and waterway thereof, and the said embankment, so as aforesaid erected, raised and placed, in the said river and common king's highway there, from the said, &c. until the day of taking the inquisition, at, &c. aforesaid, he the said J. R. &c. then and there unlawfully, wilfully, knowingly and injuriously, did continue, and still do, and each of them doth continue, by reason whereof the liege subjects of our said lord the king,

(m) This was the indictment against Rosher and others, tried at assizes, 52 Geo. III. See other precedents, Cro. C. C. 306. 4 Wentw. 223. Burn, J. Highways. Starkie, 661. Cro. C. A. 381.

*Offence.* As a navigable river is a king's highway, and protected by the same regulations, any obstruction to its course is punishable in the same way with a nuisance to a public road, Hawk. b. 1. c. 76. s. 1. Its soil belongs *prima facie* to the crown, and not to the occupiers of the adjoining lands, though it may be shown to be vested in a private individual, Dougl. 441. The antiquity of an obstruction will be no ground to shew that it is legal, 6 East, 195. And even the rightful existence of a weir of brushwood will not authorise the building one

of stone in its room. For the fish, as observed by lord Ellenborough, could always escape through and over the former, "and it is not competent to another to debar them of it by making an impervious wall of stone, through which the fish could not insinuate themselves, as it is well known they will through a brushwood weir." 6 East, 199. It is said that the river should be described as land covered with water. Cro. Jac. 324. though this is not now the practice, and seems inconsistent with the statement, that the stream is a highway for shipping, and other carriages by water. There is no occasion to show the boundaries of the stream, for it may be said to have none, even more properly than a way by land. Andr. 145.

during all the time aforesaid, could not, nor can they now, pass, repass and navigate, with their ships, vessels, boats and craft, in and along the said river and common highway there, as they before used and were accustomed to do, and still of right ought to do, without great peril and danger of their lives, and the destruction and loss of their said ships, vessels, boats and craft; to the great damage and common nuisance of all the liege subjects of our said lord the king, in and along the said river and common king's highway there, passing and repassing, and navigating with their ships, vessels, boats and craft, as aforesaid; to the evil example of all others in the like case offending, and against the peace, &c. And the jurors, &c. do further present, that the said J. R. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, unlawfully, wilfully, knowingly and injuriously, did raise, erect and place, and cause to be erected, raised and placed, a certain other embankment, composed of wood, gravel, earth, chalk, rubbish, stones and other materials, in and upon the soil and bed of the said river Thames, and common king's highway there, in the stream and waterway of the same, of great length and width, to wit, of the length of one hundred feet along the stream of the said river, and common king's highway, parallel with the banks thereof, and of the width of eighty feet athwart and across the stream and waterway of the same, and the said embankment, so as aforesaid erected, raised and placed, from the said, &c. until the day of taking this inquisition, to wit, at, &c. aforesaid, he the said J. R.\* unlawfully, wilfully, knowingly and injuriously, did continue, and still doth continue, to the great damage and common nuisance of all his majesty's liege subjects, and against the peace, &c. And the jurors, &c. do further present, that the said J. R. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, in the said river, and common king's highway there, and in and upon the bed and soil thereof, and in the stream and waterway thereof, unlawfully, wilfully, and knowingly and injuriously, did erect, raise and place, and cause to be erected, raised and placed, a certain wharf, composed of wood, chalk, gravel, earth, rubbish, stones and other materials, of great length, to wit, of the length of one hundred feet along the stream and waterway thereof, parallel with the banks thereof, and of the width of eighty feet athwart and across the stream and waterway thereof, and the said wharf, so as aforesaid, erected, raised and placed, in the said river, and common king's highway there, from the said, &c. until the day of taking this inquisition, at, &c. aforesaid, he the said J. R. unlawfully, wilfully, knowingly and injuriously, did continue, and still doth continue, by reason whereof the liege

Second  
count.

[\*634]

Third  
count.

Fourth  
count.

[\*635]

For mak-  
ing an em-  
bankment  
or wharf  
projecting  
into the  
Thames.  
(n)

subjects of our said lord the king, during all the time aforesaid, could not, nor can they now, pass, repass and navigate with their ships, vessels, boats and craft, in and along the said river and common king's highway there, as they before used and were accustomed to do, and still of right ought to do, without great peril and danger of their lives, and the destruction and loss of their said ships, vessels, boats and craft, to the great damage, &c. [*conclusion as ante 633.*] And the jurors, &c. do further present, that the said J. R. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, unlawfully, wilfully, knowingly and injuriously, did cast and throw, and caused to be cast and thrown, divers and very many large quantities of wood, gravel, earth, chalk, rubbish, stones and other materials, in and upon the soil and bed of the said river, and common king's highway there, and in the stream and waterway thereof, to wit, one hundred waggon loads of wood, one hundred waggon loads of gravel, one hundred waggon loads of earth, one hundred waggon loads of chalk, one hundred waggon loads of rubbish, one hundred waggon loads of stones, and one hundred waggon loads of other materials, thereby then and there raising and producing a certain great mound, projecting and extending to a great length and width, to wit, the length of one hundred feet along the stream and waterway of the said river, and common king's highway there, parallel with the banks thereof, and of the width of eighty feet across and athwart the stream and waterway thereof, and the said mound so raised and produced as aforesaid, from the said, &c. until the day of\* taking this inquisition, to wit, at, &c. aforesaid, he the said J. R. unlawfully, wilfully, knowingly and injuriously, did continue, and still doth continue, to the great damage and common nuisance, &c. and against the peace, &c.

Kent. That part of the river Thames which passes, runs and flows in, through, and along the county of Kent, is, and from time whereof the memory of man runneth not to the contrary, has been an ancient and common king's highway, for all his majesty's liege subjects, with their ships, vessels, craft, wherries and boats, to sail, row and navigate, and safely to convey their wares, goods, and merchandizes, together with themselves, their mariners, and passengers, on board the same, to either bank of the said river, at their free will and pleasure, and for their common benefit and advantage, and that A. P. late of, &c. together with divers other persons, whose names are to the jurors aforesaid as yet unknown, on, &c. and on divers other days and times between that day and the finding of

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(n) This was the indictment against Peck and others, A. D. 1801.



this inquisition, near to a certain ancient and long used and accustomed public and common landing-place, for the landing of his majesty's liege subjects from their respective ships, vessels, craft, wherries, and boats, in the parish of Milton next Gravesend, in the county aforesaid, then and there being, with force and arms, as well at the said parish of ———, as in the parish of M. unlawfully, designedly and injuriously, did cast and throw, and cause and procure to be cast and thrown, into and upon the bed, stream, course, and waterway of the said river of Thames, and common king's highway there, divers and very many large quantities of chalk, stone, dirt, and rubbish, to wit, twenty thousand tons of chalk, stone, dirt, and rubbish, thereby forming a great mound, wharf, and embankment, projecting and extending into, athwart, and across the bed, stream, course, and waterway of the said river and common king's highway there, to a very great extent and length, to wit, to the extent and length of forty feet, to wit, to the extent and length of twenty feet, in the said parish of G. and twenty feet in the said parish of M. and along the shore and bank of the said river and common king's highway there, to a very great extent and breadth, to wit, to the extent and breadth of other forty feet, to wit, twenty feet thereof in the said parish of G. in the county aforesaid, and twenty feet thereof in the said parish of M. in the county aforesaid, whereby, and by means whereof, the bed, stream, course, and waterway of the said river and common king's highway there, during all the time aforesaid, became, and was, and still\* is, greatly straitened and narrowed, and great quantities of mud, soil, sand and gravel, during all the times aforesaid, accumulated, and still continue to accumulate, near and about the same mound, wharf, and embankment, and near and about the said ancient and long used and accustomed public and common landing-place, in and upon the bed, stream, course, and waterway of the said river, and common king's highway there, and the navigation of his majesty's liege subjects in and along the said river, and common king's highway there, was, during all the time aforesaid, and still is, greatly impeded and rendered less safe and secure than it before was, and otherwise would have been, and of right ought to be, and the landing of his majesty's liege subjects at the said ancient and long used and accustomed public and common landing-place there, was, during all the time aforesaid, and still is, greatly circumscribed, obstructed, and impeded, and rendered difficult and dangerous, to the great damage and common nuisance of all his majesty's liege subjects, in, along, and upon the said river, and common king's highway there, passing, repassing and navigating, and of all his majesty's liege subjects landing from

[\*636]



Second  
count.

[\*637]

Third  
count.

their said ships, vessels, craft, wherries and boats, at the said ancient, long used, and common and public landing-place, and against the peace, &c. And the jurors, &c. do further present, that the said A. P. together with the said divers other persons, whose names are to the jurors aforesaid as yet unknown, afterwards, to wit, on the said, &c. and on divers other days and times between that day and the finding of this inquisition, with force and arms, as well at the parish of G. as at the parish of M. in the county aforesaid, unlawfully, designedly, and injuriously, did cast and throw, and cause and procure to be cast and thrown, divers and very many other large quantities, to wit, twenty thousand other tons of chalk, gravel, soil and rubbish, into, and upon the bed, stream, course and waterway of the said river Thames, and common king's highway there, near to a certain other ancient, long used and accustomed public and common landing-place, in the said parish of M. thereby forming a certain other great mound, wharf, and embankment, projecting and extending into, athwart, and across, the bed, stream, course, and waterway of the said river and common king's highway there, to a very great extent and length, to wit, to the extent and length of forty feet, to wit, twenty feet thereof in the said parish of G. and twenty other feet thereof in the said parish of M. and along the shore and bank of the said river, to a great extent and breadth, to wit, to the extent and breadth of forty feet, to wit, twenty feet thereof in the said parish of G. and twenty feet thereof in the said parish of M. whereby, &c. and by means whereof,\* the bed, stream, course, and waterway of the said river and common king's highway there, was, during all the time aforesaid, and still is, greatly obstructed, impeded, straitened, and narrowed, and rendered less safe and commodious to his majesty's liege subjects, in, upon, and along the said river and common king's highway there, passing, repassing, and navigating, with their ships, vessels, craft, wherries and boats, than the same otherwise would have been, and ought of right to have been, to the great damage, and common nuisance of all his Majesty's liege subjects, in, upon and along the said river and common king's highway there, passing, repassing, and navigating, and against the peace, &c. And the jurors, &c. do further present, that the said A. P. and the said divers other persons, whose names are to the jurors aforesaid as yet unknown, afterwards, to wit, on the said, &c. with force and arms, at the said parish of G. in the county aforesaid, and at the said parish of M. in the county aforesaid, unlawfully, designedly, and injuriously, did cast and throw, and cause and procure to be cast and thrown, divers and very great other quantities, to wit, twenty thousand other

tons of chalk, gravel, dirt, and rubbish, upon and into the bed, stream, course, and waterway of the said river of Thames, and common king's highway there, thereby forming a certain other large mound, wharf, and embankment, projecting from the bank of the said river into, across, and athwart the bed, stream, course, and waterway of the said river and common king's highway there, to a great extent and length, to wit, to the extent and length of other forty feet, (to wit) twenty feet, part thereof, in the said parish of St. G. in the county aforesaid, and twenty other feet in the parish of M. aforesaid, and along the said bank of the said river and common king's highway there, to a great extent and breadth, to wit, to the extent and breadth of other forty feet, to wit, twenty feet thereof in the said parish of G. in the county aforesaid, and twenty other feet thereof in the said parish of M. to the great damage and common nuisance of all his majesty's liege subjects upon the said river and common king's highway there, passing, repassing, and navigating, in and with their ships, vessels, craft, wherries, and boats, and against the peace of our said lord the king, his crown, and dignity.

That J. C. late of, &c. on, &c. with force and arms, at, &c. a certain ancient watercourse adjoining to the king's highway, within the same parish, leading from the town of E. in the county aforesaid, towards and unto the city of London, with gravel and other materials, unlawfully and injuriously did obstruct, and stop up; and\* the said watercourse, so as aforesaid obstructed and stopped up from the said, &c. until the day of the taking of this inquisition, at, &c. aforesaid, unlawfully and injuriously did continue, by reason whereof the rain and waters that were wont and ought to flow and pass through the said watercourse, on the same day and year aforesaid, and on divers other days and times afterwards, between that day and the day of the taking of this inquisition, did overflow and remain in the said king's common highway there, and thereby the same was, and yet is, greatly hurt, damaged, impaired, and spoiled, so that the liege subjects of our said lord the king through the same way, with their horses, coaches, carts, and carriages, then and on the said other days and times, could not, nor yet can go, return, pass, repass, ride, and labour, as they ought and were wont to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, through the same highway going, returning, passing, repassing, riding, and labouring, and against the peace, &c.

For stopping an ancient watercourse, whereby the water overflowed the adjoining highway, and damaged the same. (e)

[\*638]

(e) Cro. C. C. 8th Ed. 306. and note 632. and ante 621. and see precedent

For plac-  
ing putts  
in the riv-  
er Severn,  
and there-  
by ob-  
structing  
the navi-  
gation, &c.  
(p)

[\*639]

[*Commencement as ante 2.*] That the river Severn, that is to say, a certain part of the said river lying and being in the said county of G. is, and from the time whereof, &c. hath been an ancient river, and the king's ancient and common highway, for all the liege subjects of our said lord the king, and his predecessors, with their ships, barges, lighters, boats, wherries and other vessels, to navigate, sail, row, pass, re-pass and labour, at their will and pleasure, without any impediment or obstruction whatsoever. And the jurors, &c. do further present, that S. H. late of, &c. on, &c. and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, in the county aforesaid, unlawfully, wilfully and injuriously, did erect, place, fix, put and set, in the said river, and king's ancient and common highway there, near a certain place, called, &c. a certain snare, trap, machine and engine, for the catching and taking of fish, commonly called putts, and composed of wood, wooden stakes, and twigs; and that he the said S. H. on the said, &c. and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, the said snare, trap, machine and engine, called putts, unlawfully, wilfully, and injuriously, did continue, and still doth continue, so erected, placed, fixed, put and set in the said river and king's ancient and common highway aforesaid; by means whereof, the navigation and free passage of, in, through, along and upon the said river Severn, and the king's ancient and common highway\* there, on, &c. aforesaid; and the said other days and times, hath been, and still is, greatly straitened obstructed and confined, to wit, at the said, &c. so that the liege subjects of our said lord the king, navigating, sailing, rowing, passing, and re-passing, and labouring, with their ships, barges, lighters, boats, wherries and other vessels, in, through, along, and upon the said river and king's ancient and common highway there, on, &c. aforesaid, and the said other days and times, could not, nor yet can go, navigate, sail, row, pass, re-pass and labour, with their ships, barges, lighters, boats, wherries, and other vessels, upon and about their lawful and necessary affairs and occasions, in, through, along, and upon the said river and king's ancient and common highway there, in so free and uninterrupted a manner as of right they ought, and before have been used and accustomed to do, to the great damage and common nuisance of all the liege subjects of our said lord the king, navigating, sailing, rowing, passing, re-passing, and labouring, with their ships, barges, lighters, boats,

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(p) Cro. C. C. 8th Ed. 301. 2 Star- note ante 632.  
kie 661. see also precedent and

wherries and other vessels, in, through, along, and upon the said river Severn, and the king's ancient and common highway there, to the great obstruction of the trade and navigation up and upon the said river, in contempt, &c. to the evil, &c. and against the peace, &c.

That W. G. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in and across a certain navigable river, being the king's common highway there, called the River Thames, otherwise the Thames, used for all the liege subjects of our said lord the king, with their barges, boats, and other vessels, to navigate, sail, pass and repass, in and along, at their free will and pleasure, unlawfully and injuriously did erect and place, and caused to be erected and placed, certain ledges and dams, to wit, two ledges and two dams, respectively, composed of wood, gravel, earth and stones, and being of great height and length, to wit, each thereof five feet in height, and seventy feet in length, and the same ledges and dams, and each of them respectively, so as aforesaid erected and placed in and across the said river and highway, from the said, &c. until the day of the taking of this inquisition, at, &c. aforesaid, he the said W. G. unlawfully, obstinately and injuriously, did continue, and still doth continue, by reason whereof the liege subjects of our said lord the king, during all the time aforesaid, could not, nor can they now, navigate, sail, pass and repass, with their barges, boats and other vessels, in and along the said river and highway, as they before used and were accustomed to do, and still of right ought to do, without great peril and danger of their lives, and the\* destruction and loss of their said barges, boats and other vessels, to the great damage, &c. [conclusion as ante 639.] And the jurors, &c. aforesaid, upon their oath aforesaid, do further present, that the said W. G. afterwards, to wit, on the said, &c. and continually from thence until the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, two other ledges and two other dams, &c. [as in the first count] which had been before that time unlawfully erected, &c. unlawfully, obstinately and injuriously, did continue, and still doth continue, the same so erected and placed, &c. [same to the end.]

For erecting ledges and dams in the river Thames, and thereby injuring the navigation. (g)

[\*640]

Second count, for continuing ledges and dams erected by others.

That from time whereof, &c. there has been, and still is, a common water-course, near a certain place called T. within the parish of S. in the said county, which continually during all the said time, at all times of the year (r) hath run, and been used and accustomed, and of right ought, without any obstruction or impediment, to run out of the land of B. S.

For a nuisance in diverting a water-course running into a public pond. (r)

(g) Cro. C. A. 381. see precedent and notes, ante 632.

(r) 4 Went. 223. see precedent and note, ante 632.

called, &c. into and along the common highway there, leading from, &c. to &c. and into a certain pond, in the said common highway there, and from the said pond into the lands of J. O. at which said watercourse and pond, the inhabitants of the said parish of S. and all other his said majesty's subjects, in and through the said common highway, passing and repassing, all the said time have used, and of right been accustomed to water their cattle, at their free will and pleasure. Nevertheless, the jurors, &c. present, that B. S. late of, &c. in the county aforesaid, and R. S. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in and across the said watercourse, in the said highway there, a certain mound, bank, or dam, did then and there make, erect and build, and the same did raise so high, that the said water in its said ancient course was obstructed, and into the said pond did not run, as it was used, and accustomed, and ought to do, so that the inhabitants of the said parish, and all other his majesty's subjects, in and through the said common highway, passing and repassing, were, and still are deprived of the use of the said pond and water for their cattle, and hindered from enjoying the same as they ought, and were wont to do, to the great damage and common nuisance, not only of all the inhabitants of the said parish of S. but of all other the liege subjects of our said lord the king, in and through the said common highway passing and going, and against the peace, &c. [Second count like the first, only stating the pond alone as used by the inhabitants, and affected by the obstruction.]

Second  
count.

[\*641]  
For a nuisance and obstruction on the river Thames, by keeping a vessel sunk there.

That\* a part of the river Thames, lying and being in the parish of E. within the county of K. is, and from time whereof, &c. hath been a navigable, and an ancient and common king's highway, there used for all the liege subjects of our said lord the now king, and his predecessors, with ships, barges, lighters, boats, wherries and other vessels, to navigate, sail, row, pass and repass, and labour in, upon, and along the same, at their free will and pleasure, without any obstructions or impediment, whatsoever. And the jurors, &c. do further present, that A. B. late of, &c. on, &c. and from thence continually, until the day of the taking of this inquisition, at the parish aforesaid, in the county aforesaid, unlawfully and injuriously, a certain ship or vessel, before that time sunk in the said part of the said river, in the parish and county aforesaid, and in the said ancient king's highway there, obstructing, straitening and making dangerous the navigation, and free passage of, in, through, along and upon the said part of the said river, and ancient and common king's highway there, so that the liege subjects of our said lord the king, during all the time aforesaid, navigating, sailing, rowing, passing, repassing and labouring, with ships,

barges, lighters, boats, wherries and other vessels, in, through, along and upon the said part of the said river, and ancient and common king's highway there, during all that time, could not, and yet cannot, navigate, sail, row, pass, repass and labour, with ships, &c. upon their lawful and necessary business, affairs and occasions, in, through, along and upon the said part of the said river, and ancient common king's highway there, so safely, and in so convenient and commodious a manner, as of right they ought, and before had been used and accustomed to do, to the great danger, damage and common nuisance of all the liege subjects of our said lord the king, during all the time aforesaid, navigating, sailing, rowing passing, repassing and labouring, with ships, &c. in, through, along and upon the said part of the said river, and ancient and common king's highway there, or having occasion so to do, to the great obstruction of the trade and navigation of and upon the said river, and ancient and common king's highway there, in contempt, &c. to the evil example, &c. and against the peace, &c.

### INDICTMENTS, &c. FOR NUISANCES NEAR TO HIGHWAYS.

That T. G. late of, &c. yeoman, on, &c. and on divers other days and times, between that day and the day of the taking of this inquisition, unlawfully did keep at large, and still doth keep at large,\* a certain bull, of a very fierce, furious and unruly nature, in a certain open field called C., situate, lying, and being at the parish of D., in the said county of M., (the same field, on the days and times aforesaid, and still being, in the possession and occupation of him, the said T. G.) and, that from time whereof the memory of man is not to the contrary, there was, and still is, (t) a certain ancient common and public footway, leading from the town of A., in the parish aforesaid, through and along the said field, towards and unto the town of H., in the same county, used for all the liege subjects of our said lord the king, to pass and repass, in, through, over and along the same, at their free will and pleasure, about their lawful affairs and business. And that the said bull, on, &c., at, &c., furiously ran at, to and against one M. D. a liege subject of our said lord the

For knowingly keeping an unruly bull in a field through which there was a public footway.

(s) [<sup>s</sup>642]

(s) Cro. C. C. 8th Ed. 310. Cro. C. A. 362.

(t) The preferable allegation is, "that before and at the time of the

committing of the offence hereafter mentioned, there was and still is a certain common and public footway, &c."



king, then passing in and along the said footway, in the said field, about his lawful affairs and business ; and then and there, with its head and horns, furiously pushed at, cast down and prostrated the said M. D. there, and greatly hurt, bruised, gored and wounded the said M. D. in and upon the left shoulder of her, the said M. D. insomuch that her life was greatly despaired of. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said bull afterwards, to wit, on the said, &c. and on the said other days and times above mentioned, at, &c. so being in the said field, and of such nature as aforesaid, furiously ran at and after divers other liege subjects of our said lord the king, then passing and repassing, in and along the said footway, in the said field there, about their lawful affairs and business, and thereby greatly affrighted, terrified and alarmed the said last mentioned subjects, and divers other liege subjects of our said lord the king, on the days and times aforesaid, having occasion to pass and repass, in and along the said footway, in the said field, could not, nor can they now pass or repass, in and along the same, without great hazard and danger of being torn, gored and wounded by the said bull, (he the said T. G. on the said days and times respectively above mentioned, and long before, and still well knowing (u) the said bull to be of such fierce, furious and unruly nature, and accustomed to run at, and after, and injure persons passing and repassing, over, through and along the said field there,) to the great damage of the said M. D., to the great terror and common nuisance of all the liege subjects of our said lord the king, passing and repassing, in and along the said footway, in the said field there,\* to the evil and pernicious example of all others, in the like case offending, and against the peace,&c.

[\*643]

For keep-  
ing a furi-  
ous dog  
unmuzzled  
near  
highway.  
(x)

That W. B. late of, &c. on, &c. and on divers other days and times, between that day and the day of the taking of this inquisition, at, &c. aforesaid, near unto the king's common highway there, unlawfully did keep, and still doth keep, a certain large dog, of a very fierce and furious nature, and the said dog, on the said, &c. and on the said other days and times, at, &c. aforesaid, near unto the said highway there, unlawfully did permit, and suffer, and still doth permit and suffer to go unmuzzled, and at large, (y) by reason whereof the liege subjects of our said lord the king, on the said, &c. at, &c. aforesaid, could not, nor can they now go, return, pass and labour, in and through the said highway there, without

(u) As to the scienter see 12 Mod.

(x) From Cro. C. C. 311. see another precedent, Burn, J. Dogs. Williams, J. Dogs. 332.

(y) Semble that it ought to be alleged, that the Defendant knew of the mischievous propensity of his dog.



great hazard and danger of being bit, maimed, and torn by the said dog, and losing their lives, to the great damage, terror, and common nuisance of all the liege subjects of our said lord the king, in, by and through the said highway there, going, returning, passing, repassing and labouring, to the evil example, &c. and against the peace, &c.

That, &c. [*describe the highway as ante 576, or 593, and then proceed thus.*] And the jurors aforesaid, upon their oath aforesaid, do further present, That J. B. late of, &c. upon, &c. at, &c. aforesaid, was, and long before had been, and ever since hath been, and yet is possessed of a certain house called T. house, and of a certain yard to the same house belonging, which said house and yard are situate, lying and being, at, &c. aforesaid, and are near adjoining to the said public road, and king's common highway, lying and being at, &c. aforesaid. And that the said J. B. being so possessed of the said house and yard, as aforesaid, and well knowing the\* premises aforesaid, but being a person of wicked mind and disposition, and having no regard for the law of this realm, or for the health and welfare of the liege subjects of our said present sovereign lord the king, so going, passing and repassing, in, upon, through and along the said public road, and king's common highway, as aforesaid, &c. on, &c. and upon divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, to wit, at the said house commonly called T. house, and at and within the said yard to the same house belonging and adjoining, and also by and near the said part of the said public road and king's common highway aforesaid, lying and being within, &c. aforesaid, to which the said house and yard are now adjoining as aforesaid, did unlawfully, wilfully and injuriously, keep, and cause and procure to be kept, a great number of dogs and bitches, that is to say, twenty dogs and twenty bitches, and the said several dogs and bitches, he

For a nuisance in keeping a pack of hounds, and placing carrion near the road, whereby the air was infected.

(z)  
[\*644]

(z) See other Precedents. 1 Burr. 333. 4 Wentw. 213. 224. 225. 6 Wentw. 417. Cro. C. C. 301. 3. 6. 311. Cro. C. A. 365. Starkie, 657 to 661. and post 647.

As to nuisances in general, see Bac. Ab. Nuisances. Hawk. b. 1. c. 76. In order to constitute a nuisance by the exercise of trade, &c. it is not necessary that the smell or other inconvenience complained of should be unwholesome; it is sufficient if it impairs the enjoyment of life or property, 1 Burr. 333. And the material increase in a neighbourhood of noisome smells

is indictable. Peake, Rep. 91. With respect to the mode of describing the nuisance, the term *noxious* is a good description of the nuisance. 1 Burr. 333. It is also sufficient, if the offence be laid in a parish, without specifically shewing the spot from which it arose, or the persons whom it affected, id. ibid. If the prosecutor be one of the persons whose comfort the annoyance particularly affected, he will be entitled to his costs as a party grieved under 5 W. & M. c. 11. s. 3. 16. East 194.

Second  
count, for  
plaoing  
carrion by  
and near  
the high-  
way, omit-  
ting the  
keeping  
the dogs.

[\*645]

the said J. B. upon the said, &c., and at and upon the said divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, to wit, at the said house commonly called T. house, and at and within the yard to the said house belonging, and also by and near the said part of the said public road and king's common highway aforesaid, lying and being within, &c. aforesaid, to which the said house and yard are near adjoining as aforesaid, did unlawfully and injuriously feed and cause to be fed with offals, entrails, and pieces of stinking carrion, and dead carcases of beasts and other filth, by reason whereof the air at and near the said part of the said public road and king's common highway aforesaid, lying and being within, &c. aforesaid, to which the said house and yard are near adjoining as aforesaid, upon the said, &c. aforesaid, and at and upon the said divers other days and times between that day and the day of the taking this inquisition, at, &c. aforesaid, was and yet is filled and impregnated with noxious, hurtful, noisome and offensive stinks and smells, to the common nuisance [*conclude as post* 646, 7.] And the jurors, &c. do further present, that, &c. [*State the highway as ante* 576, 593.] And the jurors, &c. do further present, that the said J. B. well knowing the premises last aforesaid, but being such person as aforesaid, upon the said, &c., at, &c. aforesaid, was, and long before had been, and ever since hath been, and yet is possessed of a certain house, commonly called T. house, and of a certain yard to the same house belonging, which said last mentioned house and yard are situate and being within the parish of St. M. le B., &c. aforesaid, in the county aforesaid, and are near adjoining to a certain part of the said last mentioned public road and king's common highway, lying and being at, &c. aforesaid, and that\* he the said J. B. being so possessed of the said last mentioned house and yard, as last aforesaid, upon the said &c., and at and upon divers days and times, between that day and the day of the taking this inquisition, with force and arms, at, &c. aforesaid, that is to say, at the last mentioned house, commonly called T. house, and at and within the said yard to the same house belonging, and also by and near that part of the said last mentioned public road and king's common highway, lying and being within, &c. aforesaid, to which the said last mentioned house and yard are near adjoining, as last aforesaid, did unlawfully, wilfully and injuriously, lay, place and put, and cause and procure to be laid, placed and put, several quantities of offals, entrails, and pieces of stinking carrion, and dead carcases of beasts and other filth, by reason whereof the air at and near the said part of the said last mentioned public road and king's com-

mon highway, lying and being within, &c. aforesaid, to which the said last mentioned house and yard are near adjoining as last aforesaid, upon the said, &c. and at and upon the said divers other days and times, between that day and the day of taking this inquisition, at, &c. aforesaid, was, and yet is filled, tainted and impregnated with noxious, hurtful, noisome and offensive stinks and smells, to the common nuisance, &c. [*conclusion as 646, 7.*] And the jurors, &c. do further present, that, &c. [*state the highway as ante 576, 593.*] And the jurors, &c. do further present, that the said J. B. upon the said, &c. at, &c. aforesaid, was, and long before had been, and ever since hath been, and yet is possessed of a certain house called T. house, and of a certain yard to the same house belonging, which said last mentioned house and yard are situate, lying and being within, &c. aforesaid, and are near and adjoining to a certain part of the said last mentioned public road and common highway, lying and being within, &c. aforesaid, in the county of M. aforesaid, and that the said J. B. being so possessed of the said last mentioned house and yard, as last aforesaid, certain persons, whose names to the jurors aforesaid are yet unknown, upon the said, &c. and at and upon divers other days and times, between that day and the day of taking this inquisition, with force and arms, at, &c. aforesaid, that is to say, at the last mentioned house, commonly called T. house, and at and within the said yard, to the same house belonging, and also by and near the said part of the last mentioned public road, and king's common highway, lying and being within, &c. aforesaid, to which the said last mentioned house and yard are near adjoining, as last aforesaid, did unlawfully and injuriously lay, place and put, several other quantities of offals and pieces of stinking carrion, and dead carcasses of beasts, and other filth; and that the said J. B. well knowing the premises last aforesaid,\* but being such person as aforesaid, upon the said, &c. with force and arms, at, &c. aforesaid, to wit, at the said last mentioned house, commonly called T. house, and at and within the said yard to the same house belonging, and also by and near the said part of the said last mentioned road and king's common highway, lying and being within, &c. aforesaid, to which the said last mentioned house and yard are near and adjoining, as last aforesaid, several quantities of offals, entrails and pieces of stinking carrion, and dead carcasses of beasts and other filth, so as aforesaid, there laid, placed and put by the said persons, whose names to the said jurors are as yet unknown, did unlawfully, wilfully, knowingly and injuriously, permit and suffer, and still doth permit and suffer, there to be and remain, to wit, at, &c. aforesaid, to the common nui-

Third count, that certain persons, whose names are unknown, placed the carrion, and that defendant suffered it to remain.

[\*646]

Fourth  
count,  
for placing  
offals, &c.  
merely.

[#647]

sance, &c. [*conclusion as post.* 646, 7.] And the jurors, &c. do further present, that, &c. [*stating the highway as ante* 576, or 593.] And the jurors, &c. do further present, that upon the said, &c. at, &c. aforesaid, there was and long before had been, and ever since hath been, and still is, a certain house, commonly called T. house, and a certain yard to the same house belonging, which said last mentioned house and yard are near adjoining to a certain part of the aforesaid last mentioned public road and king's common highway, lying and being at, &c. aforesaid, to wit, at a certain place, situate within, &c. aforesaid. And the said jurors, &c. do further present, that the said J. B. well knowing the premises last aforesaid, but being such person as aforesaid, upon the said, &c. and at and upon divers other days and times, between that day and the day of taking this inquisition, with force and arms, at, &c. aforesaid, that is to say, at the said last mentioned house, commonly called T. house, and at and within the said yard to the same house belonging, and also by and near the said part of the said last mentioned road and king's common highway, lying and being at, &c. aforesaid, to wit, at the said place, there situate, within, &c. aforesaid, and to which the said last mentioned house and yard are near adjoining, as last aforesaid, did unlawfully, wilfully and injuriously, lay, place and put, and cause and procure to be laid, placed and put, other great quantities of offals, entrails and pieces of stinking carrion, and dead carcases of beasts, and other filth, by reason whereof the air at and near the said part of the said last mentioned public road and king's common highway, lying and being at T. aforesaid, to wit, at the said place, there situate, within, &c. aforesaid, and to which the said last mentioned house and yard are near and adjoining, as last aforesaid, upon the said, &c. and at and upon the said divers other days and times, between that day and the day of taking this inquisition, at &c. aforesaid, was and yet is filled, tainted, and impregnated with noxious, hurtful, and offensive stinks and smells, to the\* common nuisance of all the liege people and subjects of our said present sovereign lord the now king, going, passing and repassing, in, upon, through and along the said part of the said last mentioned public road and king's common highway, lying and being at T. aforesaid, to wit, at the said place, there situate, within, &c. and to which the said last mentioned house and yard are near and adjoining, as last aforesaid, in contempt of our said present sovereign lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and also against the peace of our said present sovereign lord the king, his crown and dignity.

[Another precedent for a similar nuisance contains, in addition to the above, the following allegation.] And also thereby the said dogs and bitches so kept and confined as aforesaid, in the several days, and times aforesaid, and in the night time of the said several days during the natural and proper hours of rest of the liege subjects of our said lord the king, inhabiting the said dwelling houses in, &c. aforesaid, made divers loud yells, moans, and offensive noises, and thereby the said liege subjects of our said lord the king so inhabiting the dwelling houses aforesaid, on the said several times aforesaid, at &c. were greatly annoyed, and deprived of their natural rest.

The like for keeping dogs which made noises in the night.

Commencement as ante 2.] That T. T. late of, &c. on, &c. and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at, &c. near the dwelling houses of divers liege subjects of our said lord the king, and also near divers public streets and common highways, there did and yet doth keep ten hogs; and the said hogs then and there, to wit, on the said &c., and on the said other days and times, at &c. aforesaid, unlawfully and injuriously did feed, and yet doth feed, with the offal and entrails of beasts and other filth, by reason whereof divers noisome and unwholesome smells and stench, during the time aforesaid, did from thence there arise, and the air there was and yet is thereby greatly corrupted and infected, to the great damage and common nuisance, not only of all the liege subjects of our said lord the king there resident and dwelling, but also to all the liege subjects of our said lord the king passing and repassing in, by, and through the said streets and common highways there, to the evil example of all others in the like case offending, and against the peace, &c.

For keeping hogs near a public street (a)

That E. H. late of, &c. on, &c. and on divers other days and times then before, to wit, in, &c. aforesaid, and near the dwelling houses\* of divers liege subjects of our said lord the king, and also near a certain open and public street and road there, commonly called M. street, the said public street and road being a common street, road, and thoroughfare, for all the liege subjects of our said lord the king, with their coaches, carriages, horses, waggons, carts, goods, chattels, and merchandises, to go, return, or pass, at their will and pleasure, did unlawfully and injuriously kill and slay, and cause to be killed and slayed, forty sheep, and the excrements, blood, entrails, and other filth, coming from the said sheep, did then and on the said other days and times there cause and permit

For killing sheep near the highway and street, leaving the carcases, &c. there. (b) [#648]

(a) Cro. C. C. 8th Ed. 305. 7th Ed. 533. This is an offence at common law. 2. Ld. Raym. 1163.

(b) 4 Wentw. 225. See an Indictment of this nature, ante 629. and see the precedent and notes, ante 643. - 1 Stra. 686.

Second  
count.

to lie and remain in the said open and public street and road for a long time, whereby divers filthy, noisome, and unwholesome smells from the excrements, blood, entrails, and other filth, coming from the said sheep as aforesaid, then and on the said other days and times there did arise, so that the air there was greatly corrupted and infected, to the great damage and common nuisance, not only of all the liege subjects of our said lord the king near the said place inhabiting and dwelling, but also of all other liege subjects of our said lord the king, in, by, and through the said common streets and highways aforesaid, going, returning and passing, and against the peace of our said lord the king, his crown and dignity. And the jurors of our said lord the king, upon their oath aforesaid, do further present that the said E. H. on the said &c., and on divers other days and times, as well before as after, with force and arms, at, &c. aforesaid, near the dwelling houses of divers liege subjects of our said lord the king, and also near divers streets and common highways there, did hang out and expose and cause to be hung out and exposed in the public and open street and road aforesaid, for sale, the bodies and carcases of divers oxen, cows, heifers, sheep, lambs, calves and pigs, and did then and there, on the said, &c. and divers other days and times, between that day and the day of the taking of this inquisition, cause and permit to remain in the said open street and common highway for a long time, whereby divers noisome and unwholesome smells did then, and on the said other days and times, there arise, so that the air there was greatly corrupted and infected, to the great damage &c. (as in first count.)

Against a  
butcher  
for using  
his shop  
as a  
slaughter-  
house  
in a pub-  
lic mar-  
ket. (c)  
[\*649]

That H. H. late of, &c. on &c. and on divers other days and times then before, at, &c. in a certain shop of him the said H. H. situate and being in a common market there, called Leadenhall Market,\* (the said market being a common passage for all the liege subjects of our said lord the king, with their goods, chattels, and merchandises, to go, return, pass, and repass, at their free will and pleasure,) did unlawfully and injuriously kill and slay, and cause to be killed and slain, ten lambs, and the excrements, blood, entrails, and other filth, coming from the said lambs, did then, and on the said other days and times respectively, there cause and permit to lie and remain in the said shop for a long time, to wit, for the space of five hours on each of those days, whereby divers filthy and unwholesome smells and stench from the excrement, blood, entrails and other filth, coming from the lambs aforesaid, then and on the said other days and times respectively there did arise, and the air there was thereby greatly

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(c) Cro. C. C. 8th Ed. 301. 7th the precedent and note, ante 643. Ed. 519. And see ante 629, and



corrupted and infected, to the great damage and common nuisance, not only of all the liege subjects of our said lord the king near there inhabiting and dwelling, but also of all other the liege subjects of our said lord the king, in, by, and through, the said common market and passage, going, returning, passing, repassing, and labouring, to the evil example, &c. and against the peace, &c.

That J. C. late of, &c. on, &c. with force and arms, at, &c. near the dwelling-houses of divers liege subjects of our said lord the king there, and also near divers streets and common highways there, did unlawfully and injuriously erect and set up, and cause to be erected and set up, a certain furnace, with a boiler, to be used for boiling of tripe, and other entrails, and offal of beasts, and that the said J. C. on the said, &c. and on divers other days and times, between that day and the day of the taking of this inquisition, at, &c. aforesaid, divers large quantities of tripe and other entrails, and offal of beasts, in the said boiler, unlawfully and injuriously did boil, whereby divers noisome and unwholesome smokes and smells, did then, and on the said other days and times, from thence there arise, so that the air there was greatly corrupted and infected, to the great damage and common nuisance of all the liege subjects of our said lord the king, not only near the same place inhabiting and residing, but also in and through the said common streets and highways going, returning, passing, and repassing, and against the peace, &c.

For erecting a furnace with a boiler, and using it for the boiling of tripe and offal of beasts. (d)

[Commencement as ante 2.] That A. B. late of, &c. on, &c. and on divers other days and times, between that day and the day of the taking this inquisition, with force and arms, at, &c. aforesaid, to wit, in a certain yard or backside adjoining to his dwelling-house\* there situate, and near to a certain public street and king's highway there, called O. Street, and also near to the dwelling-houses of divers liege subjects of our said lord the king there likewise situate, in two certain vessels commonly called coppers, unlawfully and injuriously did boil, and cause and procure to be boiled, several large quantities of tripe, entrails, offals, putrid bellies, and paunches, of divers beasts, by reason whereof divers great smoke, and fetid, noisome, obnoxious, unwholesome smells, *savours* and odours, stench and stinks, then and at the said divers other days and times did arise and ascend from the said tripe, entrails, offals, putrid bellies, and paunches, so boiled as aforesaid, and the air thereby and thereabouts was greatly corrupted, contaminated, and infected, and the said dwelling-houses of the said liege subjects of our said lord the king,

The like in a fuller form (e)

[\*650]

(d) Cro. C. C. 8th Ed. 306. 7th Ed. 535. 1 Stra. 686. Leg. Flu. 25, 57. (e) See form, 6 Wentw. 417.

Second  
count.

Third  
count.

[\*651]

On a road  
Act for e-  
recting a  
necessary  
house near  
to a pub-  
lic high-

situate near the said yard or backside, adjoining to the said dwelling-house of the said A. B. then and at the said divers other days and times were rendered very unwholesome, offensive, unfit, and improper for habitation, to the great danger and hazard of breeding an infectious and pestilential disorder among the liege subjects of our said lord the king, to the great damage and common nuisance, as well of all the liege subjects of our said lord the king, in and through the said street and king's highway going, returning, passing, riding, and labouring, as of all the liege subjects of our said lord the king inhabiting and residing near the said yard or backside, adjoining to the said dwelling-house of the said A. B. and against the peace, &c. That the said defendant, on the third day of May in the year aforesaid, and divers other days and times, between that day and the day of the taking this inquisition, with force and arms, &c. &c. (exactly like the first count, only leaving out the word *savours*.) And the jurors, &c. do further present, that the said A. B. on, &c. and on divers other days and times, between that day and the day of the taking this said inquisition, with force and arms, at, &c. to wit, behind his dwelling-house there situate, and near a certain public street and the king's highway there, called O. Street, and also near the dwelling-houses of divers liege subjects of our said lord the king, there likewise situate, unlawfully and injuriously did keep a certain tripe house, for the purpose of boiling of tripe, offals, putrid bellies, and stale entrails of beasts therein, and that the said defendant then and at the said other times in the same tripe house did boil, and cause and procure to be boiled, several large quantities of tripe, offals, putrid bellies, and stale entrails of beasts, by reason whereof divers fetid, noisome, and unwholesome smells, savours, and stinks, then and at the said divers other days and times did arise and ascend from the said last mentioned tripe, offals,\* and putrid, and stale entrails of beasts, so boiled as last aforesaid, and the air thereby there and thereabouts was greatly corrupted and infected, and the said dwelling-houses of the said liege subjects of our said lord the king, situate near the said tripe house, then and at the said several other days and times were rendered very unwholesome and unfit for habitation, to the great damage, &c. [*conclusion as ante 650.*]

[Commencement as ante 2 vol. 2.] That H. R. late of, &c. on, &c. at, &c. aforesaid, unlawfully and injuriously did erect and cause to be erected, a certain building, called a necessary house, upon a certain piece of land, whereof he the said H. R. was then and there occupier, adjacent to and within fifty feet of a certain road, from, &c. across, &c. into, &c. and the aforesaid building so made and erected as afore-

said, from, &c. aforesaid, at, &c. aforesaid, until the day of the taking this inquisition, unlawfully and injuriously did continue, and still doth continue, to the great damage and common nuisance of all the liege subjects of our said lord the king, not only thereabouts inhabiting and dwelling, but also all those subjects in, by and through the same road going, returning, passing and travelling, against the form of the statute, in such case made and provided, in contempt of our said lord the king and his laws, and also against the peace of our said lord the king, his crown and dignity. And the jurors, &c. do further present, that on, &c. a certain road was erected and made from, &c. across, &c. into, &c. by virtue of, and in pursuance of a certain Act of Parliament, made and passed in the 29th year of the reign of our sovereign lord George the Second, by the grace of God, of Great Britain, &c. entitled, &c. [*set out the title of the Act.*] And the jurors, &c. do further present, that in and by the aforesaid Act of Parliament it was amongst other things ordained and enacted, that no building should be erected on any new foundation by any proprietor or occupier of lands adjacent to the said new road, within fifty feet of the said road, and that no part of the said new road should be paved, and if any such buildings should be thereafter erected, or any part of such new road should be paved, contrary to the true intent and meaning of such act, the same should be deemed common nuisances. And the jurors, &c. do further present, that H. R. late of, &c. on, &c. was the occupier of certain lands adjacent to and within fifty feet of the said road, to wit, of a certain piece of land on the east side of the road, from, &c. across, &c. into, &c. And\* the jurors, &c. do further present, that the said H. R. well knowing the premises afterwards, to wit, on the said, &c. at, &c. aforesaid, unlawfully and injuriously did erect and cause to be erected, a certain building on a new foundation, he the said H. R. being occupier of such lands adjacent to the said new road, within fifty feet of the said new road, in contempt, &c. against the form of the statute, &c. and against the peace, &c.

way, that it became a common nuisance, contrary to the act. (f)

Second count.

[\*652]

That R. S. late of, &c. on, &c. and on divers other days and times, between that day and the day of taking this inquisition, with force and arms, at, &c. aforesaid, to wit, in a certain common and public market there, called the Borough market, unlawfully and injuriously did put, place and leave, and caused and procured to be put, placed and left, divers large quantities of dung and filth, whereby divers noxious

For laying dung, &c. in a public market, whereby the air infected and passengers annoyed. (g)

(f) See 4 Wentw. 225. Quare, if the road ought not to be termed a "common and public highway."

(g) This indictment was drawn by a very eminent pleader now at the bar. 1 Stra. 686.

and unwholesome smells from the said dung and filth did then and there arise, and thereby the air there became and was greatly corrupted and infected, to the great damage and common nuisance not only of all the liege subjects of our said lord the king inhabiting and residing near the place where the said dung and filth was so put, placed, and left as aforesaid, but also of all other liege subjects of our said lord the king, in, by and through the said market, and near the place aforesaid, going, returning, passing and repassing, and against the peace of our said lord the king, his crown and dignity.

For boiling bullock's blood for making colours.  
(h)

That J. B. late of, &c. on, &c. and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, in a certain building belonging to the dwelling house of the said J. B. there situate and being, and also near the dwelling houses of divers subjects of our said lord the king, and near divers public streets and common highways there, did unlawfully boil and cause to be boiled, a great quantity of bullock's blood and other filth, for the making and mixing of colours, whereby divers noisome and unwholesome smells, on, &c. aforesaid, and on the said other days and times during the time aforesaid, at, &c. aforesaid, did from thence arise, so that the air there was thereby greatly corrupted and infected, to the great damage and common nuisance of all the liege subjects of our said lord the king, not only there inhabiting and residing, but also going, returning, passing and repassing, through the said streets and highways there, and against the peace, &c.

[\*653]  
Indictment for making hartshorn in a building erected near public streets. (i)  
First count for erecting a building, &c. for the purpose of making hartshorn therein.

[Commencement\* as ante 2 vol. 2.] That H. T. late of, &c. on, &c. with force and arms, at, &c. near divers public streets, being the king's common highways there, and also near the dwelling houses of divers liege subjects of our said lord the king, there situate and being, did unlawfully and injuriously, make, erect, and build, and cause and procure to be made, erected and built, a certain erection or building, for the purpose of making and extracting a certain liquor called hartshorn, otherwise spirit of hartshorn, from the bones of beasts and other animals, therein, and did unlawfully and injuriously make, set up, and place, and cause and procure to be made, set up, and placed, in the said building, divers stoves, furnaces, cauldrons and boilers, to wit, two stoves, two furnaces, two cauldrons and two boilers, for the purpose of burning, calcining and boiling, the bones of beasts

(h) Cro. C. C. 7th Ed. 536, 1  
Stra. 686. Leg. Flu. 25, 57.

(i) See Cro. C. C. 8th Ed. 311  
1. Stra. 686. Leg. Flu. 25, 57.

and other animals therein, in order to prepare the same for making and extracting the said liquor therefrom, and for the purpose of making and extracting the said liquor therefrom; and that the said H. T. afterwards, to wit, on, &c. aforesaid, and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms at, &c. aforesaid, did unlawfully and injuriously burn, calcine and boil, and cause and procure to be burnt, calcined and boiled, in the said stoves, furnaces, cauldrons, and boilers, respectively, so made, set up, and placed, in the said building as aforesaid, divers large quantities of the bones of beasts and other animals, that is to say, one thousand bushels of the bones of beasts and other animals, for the purpose aforesaid, and did then and there make and extract divers large quantities of the said liquor, that is to say, one hundred gallons of the said liquor, from the said bones of beasts and other animals, so burnt, calcined and boiled, in the said stoves, furnaces, cauldrons and boilers, respectively, as aforesaid, by means of which said premises divers large quantities of noisome, noxious and unwholesome smokes, smells and stench, on the days and times aforesaid, then and there were emitted, sent forth, and issued from the said building, and the air there, on the days and times aforesaid, was thereby greatly filled and impregnated with many noisome offences, and unwholesome smells, stinks and stench, and has been corrupted and rendered very insalubrious, to the great damage, &c.

[*conclusion as post 654.*] And the jurors, &c. do further present, that the said H. T. on the said, &c. and continually from that time until the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, a certain erection or building, for the purpose\* of making and extracting the said liquor called hartshorn, otherwise spirits of hartshorn, from the bones of beasts and other animals therein, and divers stoves, furnaces, cauldrons and boilers, to wit, two stoves, two furnaces, two cauldrons, and two boilers, made, set up, and placed, in the said last mentioned building, for the purpose of burning, calcining, and boiling, the bones of beasts and other animals therein, in order to prepare the same for making and extracting the said liquor therefrom, and for the purpose of making and extracting the said liquor therefrom, before that time, by certain persons to the jurors aforesaid as yet unknown, near unto divers public streets, being the king's common highways there, and also near the dwelling houses of divers liege subjects of our said lord the king there situate and being, unlawfully made, erected, and built, did unlawfully continue, and yet doth continue, and that the said H. T. afterwards, to wit, on the said, &c. and on divers other days and times between that day and the day of the taking of this inquisition,

Second count, that the defendant continued a building and stoves, &c. before built, &c. by persons unknown.

[\*654]

with force and arms, at, &c. aforesaid, did unlawfully and injuriously burn, calcine and boil, in the said last mentioned stoves, furnaces, cauldrons and boilers, respectively, so unlawfully made, set up, and placed, in the said last mentioned building as aforesaid, divers large quantities of bones of beasts and of other animals, that is to say, one thousand bushels of the bones of beasts and other animals, in order to prepare the same for making and extracting the said liquor called hartshorn, otherwise spirits of hartshorn, therefrom, and for the purpose of making and extracting the said liquor therefrom, and did there, on the days and times last aforesaid, prepare, make and extract, divers large quantities of the said liquor called hartshorn, otherwise spirits of hartshorn, that is to say, one hundred gallons of the said liquor from the said bones of beasts and other animals so burnt, calcined and boiled, in the said last mentioned stoves, furnaces, cauldrons and boilers, respectively, as aforesaid; by means of which said last mentioned premises, divers large quantities of noisome, noxious and unwholesome smokes, smells, and stench, on the days and times last aforesaid, were emitted, sent forth, and issued from the said last mentioned building, and the air there, on the days and times last aforesaid, was thereby greatly filled and impregnated with many noisome offences and unwholesome smells, stinks and stench, and was corrupted and rendered wholly insalubrious; to the great damage and common nuisance of all the liege subjects of our said lord the king, not only there inhabiting and residing, but also going, returning and passing through the said streets and highways, and against the peace, &c.

For erecting and continuing a soap manufactory near an highway and dwelling houses.

(k)

[\*655]

That\* A. B. late of, &c. manufacturer of soap, on, &c. with force and arms, at, &c. near to divers public streets, being the king's common highways there, and also near to the dwelling-houses of divers liege subjects of our said lord the king, there situate and being, did unlawfully and injuriously make, erect and build, and cause and procure to be made, erected and built, a certain erection or building, for the purpose of making and manufacturing soap therein, and did unlawfully and injuriously make, set up and place, and cause and procure to be made, set up and placed, in the said erection or building, divers furnaces, stoves, cauldrons, coppers and boilers, to wit, ten furnaces, twenty stoves, twenty cauldrons, twenty coppers, and twenty boilers, for the purpose of boiling, melting and mixing tallow, soap lees, and other materials, used in the making or manufacturing of soap, and that the said A. B. did, on, &c. aforesaid, and on divers

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(k) See precedents ante 641 to 654. 1 Stra. 686. Leg. Flu. 25, 57.



other days and times, between that day and the day of taking this inquisition, at, &c. aforesaid, unlawfully and injuriously boil, melt and mix together, and cause and procure to be boiled, melted and mixed together, in the said furnaces, stoves, cauldrons, coppers and boilers, respectively, so made, set up and placed, in the said erection or building as aforesaid, divers large quantities of tallow, soap lees, and other materials, used in the making and manufacturing of soap, for the purpose of making and manufacturing the same into soap, and did then and there make and manufacture, and cause and procure to be made and manufactured, divers large quantities of soap from the same tallow, soap lees, and other materials. By reason of which said premises, divers noisome, offensive and unwholesome smokes, vapours, smells and stenchs, on the days and times aforesaid, were emitted and issued from the said erection or building, so that the air, on the several days and times aforesaid, at, &c. aforesaid, was thereby greatly filled and impregnated with the said smokes, vapours, smells and stenchs, and was rendered, and became and was corrupted, and offensive, uncomfortable and unwholesome, to the great damage and common nuisance of all the liege subjects of our said lord the king, there inhabiting, being and residing, and going, returning and passing through the said streets and highways, and against the peace of our said lord the king, &c. And the jurors, &c. do further present, that the said A. B. on, &c. and continually from that time till the time of taking this inquisition, with force and arms, at, &c. a certain other erection or building, for the purpose of\* making and manufacturing soap therein, and divers furnaces, stoves, cauldrons, coppers and boilers, to wit, ten furnaces, twenty stoves, &c. made, set up and placed in the said last mentioned erection or building, for the purpose of making and manufacturing the said soap before that time, by certain persons to the jurors aforesaid as yet unknown, near unto divers public streets, being the king's common highways there, and also near unto divers houses of many of his majesty's liege subjects, there situate and being, unlawfully made, erected and built, and did unlawfully continue, and yet doth continue ; and that the said A. B. on, &c. last aforesaid, at, &c. did unlawfully boil, melt and mix together, in the said last mentioned furnaces respectively, so unlawfully made, erected and built, and set up, in the said last mentioned erection or building as aforesaid, divers large quantities of tallow, soap lees, and other materials, used in making and manufacturing soap : by means of which said last mentioned premises, divers noisome, offensive, and unwholesome smokes, vapours, smells and stenchs, on the days and times last aforesaid, were emitted and issued from the said last

Second  
count, for  
continu-  
ing the  
building.  
[\*656]

mentioned building ; and the air on the days and times last aforesaid, at, &c. aforesaid, was thereby greatly filled and impregnated with the said last mentioned smokes, vapours, smells and stenchs, and was thereby rendered, and became and was corrupted, offensive, uncomfortable and unwholesome, to the great damage, &c. [*conclusion as ante 655.*] And the jurors, &c. do further present, that the said A. B. on, &c. aforesaid, with force and arms, at, &c. near to the dwelling-houses of divers of his majesty's liege subjects there situate, and also near to divers public streets, being common highways there, divers large quantities of tallow, oil, lime, pot-ashes, soap lees and other noisome and offensive materials, did boil, melt and mix together, and cause and procure, &c. by means of which said last mentioned premises, divers noisome, noxious and unwholesome smokes, vapours, smells and stenchs, on the days and times last aforesaid, at, &c. aforesaid, were emitted and issued from the said last mentioned tallow, oil, soap lees and other materials, so boiled, melted and mixed together, as last aforesaid ; and the air there on the days and times last aforesaid, was thereby greatly filled and impregnated with the said last mentioned smokes, vapours, smells and stenchs, and was thereby rendered, and then and there became, and was greatly corrupted, offensive, uncomfortable and insalubrious, to the great damage, &c. [*conclusion as ante 655.*]

[\*657]  
Against  
an apothecary for  
keeping a  
common  
inoculating house  
near the  
church in  
a town. (1)  
First  
count, for  
entertaining persons  
labouring under the  
distemper called the  
small pox, whereby  
some of the parishioners  
caught it and died,  
&c.

[Commencement as ante 2.] That B. S. late of, &c. apothecary, on, &c. with force and arms, at, &c. aforesaid, to wit, in a certain\* place there, close to and adjoining upon a certain public street and king's common highway there, called A. Street, and near to the dwelling houses of divers liege subjects of our said lord the king, there, and also near to the parish church of the parish aforesaid, unlawfully and injuriously did uphold, maintain and keep, a certain house and place for the reception and entertainment of persons labouring under a certain dangerous and infectious distemper called the Small Pox, (no house or place for the reception or entertainment of persons labouring under the said distemper having been there kept or used, before the time that he the said B. S. began to uphold, maintain and keep the same, for the purpose aforesaid,) and that he the said B. S. in the same house and place so upheld, maintained and kept, for the purpose aforesaid, on the said, &c. and continually afterwards, until the day of the taking this inquisition, with force and arms, at, &c. aforesaid, unlawfully and injuriously did permit and suffer, and still doth permit and suffer, divers persons (whose names to the jurors aforesaid are as yet un-

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(1) See Cro. C. A. 365. and other forms ante 553, 4, 5.

known,) labouring under the said dangerous and infectious distemper called the Small Pox, to be collected together, received and entertained, and there to remain and continue for a long space of time, by reason and means whereof, the said dangerous and infectious distemper called the Small Pox, on the said, &c. and on divers other days and times during the time aforesaid, was communicated to divers persons inhabiting and residing in, &c. aforesaid, and of which said dangerous and infectious distemper called the Small Pox, so communicated as aforesaid, divers of the said persons inhabiting and residing in the said parish, to wit, one W. J. and others, died, and divers other of the said persons there inhabiting and residing were, during all the time aforesaid, and still are, in great peril and danger of receiving the infection of the said distemper, and thereby losing their lives, to the great terror, detriment, danger, and common nuisance, as well of many of the liege subjects of our said lord the king, passing and repassing by the said house or place, so upheld, maintained and kept for the purpose aforesaid, and by, through and along the said public street and king's common highway, as also attending divine service in the church aforesaid, and also of those inhabiting and residing thereabouts, to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said B. S. devising and intending to communicate the dangerous and infectious distemper called the Small Pox, to and amongst the inhabitants of, &c. aforesaid, afterwards, to wit, on, &c. and on divers other days\* and times between that day and the day of the taking this inquisition, at, &c. aforesaid, in the county aforesaid, in a certain house in the occupation of him the said B. S. there situate, did inoculate, and cause to be inoculated, divers persons, and the said persons so inoculated, he the said B. S. unlawfully and injuriously did permit, and cause, and procure, to be and remain in the said last mentioned house, until they the said last mentioned persons, by means of such inoculation, had the said dangerous and infectious distemper called the Small Pox, by reason whereof the said dangerous and infectious distemper called the Small Pox, on the said, &c. and on the said last mentioned other days and times, was communicated to divers persons then inhabiting and residing in the parish aforesaid, of which said dangerous and destructive distemper called the Small Pox, so communicated as last aforesaid, divers of the said persons, then inhabiting and residing in the said parish as aforesaid, died, and divers others of the said last mentioned persons were in great peril and danger of losing their lives, and also by means of the said last mentioned premises, the said dangerous and infectious distemper called the Small Pox, on the said &c. and

Second count, for inoculating persons. whereby the small pox was communicated to the inhabitants, &c. [\*658]

the said last mentioned other days and times, at, &c. aforesaid, was communicated to divers other persons, to wit, A. B., C. D., &c. (the names of the persons who had caught the distemper) being then and there poor and unable to maintain themselves, and then not having any legal settlement within the said parish, whereby the inhabitants of the said parish, on the days and times last aforesaid, were obliged to pay, lay out and expend a large sum of money, to wit, &c. as well in and about the relief and maintenance of the said last mentioned persons, as also in and about the finding and providing proper and necessary medicines on the days and times last aforesaid, used and applied in and about the said last mentioned persons, to whom the said infectious and dangerous distemper was so communicated as aforesaid, to the great damage, danger and common nuisance of the inhabitants of the said parish of B., to the evil example, &c. and against the peace, &c.

Against  
overseers  
for putting  
a number  
of poor  
persons  
into a  
house in  
an impro-  
per neigh-  
bourhood,  
and there-  
by creat-  
ing a nui-  
sance to  
the inhabi-  
tants. (m)

[\*659]

That the Reverend T. W. late of, &c. doctor in divinity, J. K. late of, &c. esquire, and H. D. late of the same, esquire, at the time of the committing of the offence hereinafter next mentioned, were inhabitants and vestrymen of the said parishes of St. Giles in the Fields, and St. George, Bloomsbury, in the county of Middlesex, and as such vestrymen had the rule, order, and government, of\* the poor of the said parishes of St. Giles in the Fields, and St. George, Bloomsbury, in pursuance and by virtue of the statute in such case made and provided, and by reason of the premises ought to have supported and maintained the poor of the same parishes in some sufficient workhouse, or other proper place or places, within the same parishes, or one of the same parishes, to wit, at, &c. And the jurors, &c. do further present, that the said T. W., J. K. and H. D., disregarding their duty in that behalf, and devising and intending to injure and prejudice divers liege subjects of our said lord the king, being respectively owners and occupiers of dwelling-houses, situate and being in the parish of St. A., within the liberty of Westminster, did on, &c. at, &c. unlawfully, and without any sufficient cause, place in a certain messuage and building, situate and being out of the limits of the said parishes of St. Giles in the Fields and St. George, Bloomsbury, and of each of them, and within the said parish of St. A. and close to and adjoining upon a certain common street and public king's highway there, called D. Street, and near to the dwelling-houses of divers liege subjects of our said lord the king, in the said last mentioned parish situate and being, without the consent, and

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(m) This was the Indictment and obtained from the Crown Office against Willis and others, 1802, *vide*.

against the will of the owners and occupiers of the said last mentioned dwelling-houses, and the other parishoners and inhabitants of the said parish of St. A., divers and very many poor persons, to the number of two hundred and more, of and belonging to the said parish of St. Giles in the Fields, and divers and very many other poor persons, to the number of two hundred and more, of and belonging to the said parish of Saint George, Bloomsbury, the said poor persons, and all of them, being supported and maintained by and by means of the rate, and assessments made for the relief of the poor of the said parishes last mentioned, and did keep and maintain, by and by means of such rates and assessments as last before mentioned, the same poor persons, in the said messuage and building, so situate as aforesaid, for a long space of time, to wit, from the day and year last aforesaid until the taking of this inquisition, contrary to the duty of them the said T. W. J. K. and H. D. as such vestrymen as aforesaid, to the great injury and prejudice of the owners and occupiers of the said last mentioned dwelling-houses, and of the other parishoners and inhabitants of the said parish of St. A., in contempt, &c. contrary to the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said T. W. J. K. and H. D. so being such vestrymen as aforesaid, and having the rule, order, and government of the poor of the said parishes of Saint Giles in the Fields, and Saint George, Bloomsbury,\* as aforesaid, on, &c. and for a long space of time, to wit, from that day until the day of the taking of this inquisition, at, &c. did unlawfully keep, place, and maintain, and cause and procure to be placed, kept and maintained, in a certain messuage and building, situate and being out of the limits of the said parishes of Saint Giles in the Fields, and Saint George, Bloomsbury, and within the said parish of Saint A. within the liberty of Westminster, in the county of Middlesex, and close to and adjoining upon a certain common street and public king's highway, in the said last mentioned parish, called D. Street, and near to the dwelling-houses of divers liege subjects of our said lord the king in the said last mentioned parish situate and being, without the consent and against the will of the said last mentioned subjects, and the other parishoners and inhabitants of the said parish of Saint A., divers and very many poor persons to a great and unreasonable number, to wit, the number of four hundred and more, not belonging to the said parish of St. A. but part thereof belonging to the said parish of St. Giles in the Fields, and the residue thereof to the said parish of Saint George, Bloomsbury, and maintained and supported by and by means of the rates and assessments made for the relief and maintenance of the poor of the said last mentioned parishes, to

Second  
count.

[\*660]

Third  
count, for  
a conspira-  
cy to les-  
sen the  
value of  
the houses  
&c. in the  
parish of  
St. A.

[\*661]

the great damage and common nuisance of all the liege subjects of our said lord the king, near to the said last messuage and building inhabiting and dwelling, and going, passing, and returning, through the said common street and king's highway last mentioned, in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said T. W., J. K., and H. D., being inhabitants of the said parishes of St. George, Bloomsbury, and St. Giles in the Fields, in the county of Middlesex, and unlawfully devising and intending to injure, aggrieve, and prejudice, the parishioners and inhabitants of the said parish of Saint A. within the liberty of Westminster, by lessening the value of divers houses and premises situate in the said last mentioned parish, for and in respect whereof divers large sums of money have been paid and payable, under and by virtue of the rates and assessments from time to time made for the relief and maintenance of the poor of the said last mentioned parish, and by causing divers other poor persons legally settled, and who ought to be legally settled in the said parish of Saint Giles, and divers other poor persons, illegally settled, and who ought to be legally settled in the said parish of Saint George, Bloomsbury, to acquire settlements in the said parish of Saint A., and thereby to burthen and charge the parishioners and inhabitants of the said parish of Saint A. with the maintenance of such last mentioned poor persons,\* and also unlawfully devising and intending to aggrieve, injure, prejudice and annoy, divers liege subjects of our said lord the king, being respectively owners and occupiers of dwelling houses, situate in the said parish of Saint A. by rendering their habitation in the same dwelling houses uncomfortable and inconvenient, and by lessening the value thereof did on, &c. unlawfully combine, conspire, confederate and agree, among themselves, and together with divers other persons, whose names are to the said jurors at present unknown, for the unlawful purposes last aforesaid, and to cause and procure divers and very many other poor persons, to a great and unreasonable number, to wit, the number of two hundred and more, being legally settled in the said parish of Saint Giles, in the Fields, and also divers other poor persons to a great and unreasonable number, to wit, the number of two hundred and more, being legally settled in the said parish of Saint George, Bloomsbury, and being respectively maintained and supported, by and by means of the rates and assessments made for the relief and maintenance of the poor of the said parishes of Saint Giles in the Fields and Saint George, Bloomsbury, to be placed in and to dwell and inhabit, and be maintained and supported, in a certain other messuage and building, not being within the said parishes of Saint Giles, in the Fields and



Saint George Bloomsbury, or either of them, but situate and being in the said parish of Saint Anne, and close to and adjoining upon a certain common street and public king's highway in the said last mentioned parish, called D. Street, and near to the dwelling houses of divers liege subjects of our said lord the king, in the said last mentioned parish situate and being, without the consent and against the will of the owners and occupiers of the said last mentioned dwelling houses, and of the other parishoners and inhabitants of the said parish of Saint A. and that in pursuance of the said last mentioned unlawful combination and conspiracy, they the said T. W., J. K. and H. D., wrongfully and unlawfully, afterwards, to wit, on, &c. to wit, at, &c. did obtain and procure a certain other large messuage and building so situate and being out of the said parishes of Saint Giles in the Fields, and Saint George Bloomsbury, and of each of them, and in the said parish of Saint A. and close to and adjoining upon a certain common and public street and king's highway there, called D. Street, and near to the dwelling houses of divers liege subjects of our said lord the king, in the said last mentioned parish situate and being, and did then and there wrongfully and unlawfully keep and maintain, and from that time hitherto have kept and maintained, and still do keep and maintain, in the same messuage, &c. [*as in first count to the end.*] And the jurors, &c. do\* further present, that the said T. W., J. K. and H. D., being such inhabitants of the said parishes of Saint George Bloomsbury, and Saint Giles in the Fields, in the county of M. afterwards, to wit, did on, &c. at, &c. unlawfully combine, conspire, confederate and agree, among themselves and together with divers other persons, whose names are to the said jurors at present unknown, to cause and procure divers and very many other poor persons, to a great and unreasonable number, to wit, to the number of two hundred and more, being legally settled in the said parish of Saint Giles in the Fields, and also divers other poor persons, to a great and unreasonable number, to wit, the number of two hundred and more, being legally settled in the said parish of Saint George Bloomsbury, and being respectively maintained and supported by and by means of the rates and assessments made for the relief and maintenance of the poor of the said parishes of Saint Giles in the Fields, and Saint George Bloomsbury, to be placed in, and to dwell and inhabit, and be maintained and supported, in a certain messuage and building, not being within the said parishes of Saint Giles in the Fields, and Saint George Bloomsbury, or either of them, but situate and being in the said parish of Saint Anne, and close to and adjoining a certain common street and

Third  
count.  
[\*662]

Fourth  
count.

[\*663]

public king's highway in the said last mentioned parish, called D. Street, and near to the dwelling houses of divers liege subjects of our said lord the king, in the said last mentioned parish situate and being, without the consent and against the will of the owners and occupiers of the said last mentioned dwelling houses, and of the other parishoners and inhabitants of the said parish of Saint Anne, and that in pursuance of their unlawful combination and conspiracy last mentioned, they the said T. W., J. K. and H. D., wrongfully and unlawfully afterwards, to wit, on &c. to wit, at, &c. did obtain and procure, &c. [*as in the second count to the end.*] And the jurors, &c. do further present, that the said T. W., J. K. and H. D., unlawfully devising and intending to injure, aggrieve, and prejudice divers liege subjects of our said lord the king, being respectively owners and occupiers of certain messuages and buildings, situate and being in and by the side of a certain common and public street and king's highway, called D. Street, in the parish of Saint A. within the liberty of Westminster, in the county of Middlesex, by rendering their habitation in the same dwelling houses uncomfortable and inconvenient, and by lessening the value thereof, did afterwards, to wit, on, &c. at, &c. unlawfully combine, conspire, confederate and agree, among themselves, and together with divers other ill disposed persons, whose names are to the said jurors at present unknown, to cause and procure divers and\* very many other poor persons, to an unreasonable and great number, to wit, the number of four hundred and more, not belonging to or being settled in the said parish of St. A. but being maintained and supported by and by means of the rates and assessments made for the relief and maintenance of the poor of the parishes of St. Giles in the Fields, and St. George Bloomsbury, in the county of Middlesex, and part thereof belonging to the said parish of St. Giles in the Fields, and the residue thereof to the said parish of St. George Bloomsbury, to be placed in, and to dwell and inhabit, and be maintained and supported, in a certain messuage and building, situate and being out of the said parishes of St. Giles in the Fields, and St. George Bloomsbury, and of each of them, and in the said parish of St. A. and close to and adjoining upon the said last mentioned street, called D. Street, and near to the said dwelling houses last mentioned, there situate as aforesaid, without the consent and against the will of the owners and occupiers of the said last mentioned dwelling houses, and that in pursuance of their said last mentioned unlawful combination and conspiracy, they the said T. W., J. K. and H. D., did afterwards, to wit, on, &c. to wit, at the parish of St. A. aforesaid, wrongfully

and unjustly, without the consent and against the will of the owners and occupiers of the said last mentioned dwelling houses, place, keep and maintain, and from that time hitherto have kept and maintained, and still do keep and maintain, in a certain messuage and building, situate and being out of the said parishes of Saint Giles in the Fields, and Saint George Bloomsbury, and of each of them, and in the said parish of Saint A. and close to and adjoining upon the said last mentioned street, called D. Street, and near to the said last mentioned dwelling-houses there situate as aforesaid, divers and very many other poor persons, to a great and unreasonable number, to wit, the number of four hundred and more, not belonging to or being settled in the said parish of Saint A. but being maintained and supported, by and by means of the rates and assessments made for the relief and maintenance of the poor of the said parishes of Saint Giles in the Fields and, Saint George Bloomsbury, and part thereof belonging to the said parish of Saint Giles in the Fields, and the residue thereof to the said parish of Saint George Bloomsbury, to the great damage, injury and annoyance of the owners and occupiers of the said last mentioned dwelling houses, so situate as aforesaid, in contempt, &c. to the evil example, &c. and against the peace, &c.

[Commencement as ante 2.] That A. B. late of, &c. on, &c. with force and arms, at, &c. in a certain shop or premises there, near\* the dwelling houses of divers liege subjects of our said lord the king, and also near divers streets and common highways there, unlawfully and injuriously did set up, and from thence until the day of taking the said inquisition, did use, exercise and carry on the trade and business of a copper-smith, and during that time, to wit, on, &c. and on divers other days and times, between that day and the day of taking this inquisition, at early, late and unseasonable hours, and at divers other times, at, &c. aforesaid, unlawfully and injuriously made and caused to be made divers loud, terrible, and tremendous sounds and noises, in the said shop and premises, to the great damage and common nuisance of all the liege subjects of our said lord the king, not only near the same shop and premises inhabiting and residing, but also in, by, and through the said streets and common highways, then going, passing, and returning, to the evil, &c. and against the peace, &c.

For keep-  
ing cop-  
per-  
smith's  
shop so as  
to annoy  
the neigh-  
bourhood,  
(m)  
[\*664]

[Commencement as ante 2.] That E. L. late of, &c. to wit, on, &c. and on divers other days and times between that

For carry-  
ing on the  
trade of a

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(m) This precedent is from the Peake, Rep. 91.  
MS. of a gentleman at the bar. See

brazier so  
near several dwell-  
ing houses  
as to be a  
nuisance.  
(n)

[\*665]

day and the day of taking this inquisition with force and arms, at, &c. aforesaid, in a certain work shop, there situate near the dwelling houses, chambers, and residences of divers subjects of our said lord the king, therein dwelling and residing, and also near divers public king's common highways, there unlawfully and injuriously did set up, exercise, and carry on the trade and business of a tinman and brazier, and on the said, &c. and on the other days and times aforesaid, there, at early hours in the morning, and in the day time, and at late hours in the nights of the days aforesaid, unlawfully and injuriously did make, and cause and procure to be made, divers loud, harsh, tremendous, and annoying sounds and noises, by then and there hammering, and striking, and causing and procuring to be hammered and stricken, divers tin, brass, and copper instruments and utensils, and divers pieces of tin, brass, and copper, and other metals, with divers large hammers, and other implements and instruments, by reason whereof the said subjects of our said lord the king, so dwelling, residing, and living in the said dwelling-houses, chambers, and residences, near to the said work-shop, on the several days and times, were and still are greatly annoyed, and disturbed, and incommoded in the use, occupation, and enjoyment of their said dwelling houses chambers and residences, and greatly interrupted in the exercise and pursuit of their respective lawful professions, business, and transactions,\* and deprived of their natural rest and sleep, and rendered and made in other respects very uncomfortable, and thereby also the subjects of our said lord the king, in and through, and along the common highway aforesaid, passing, repassing and travelling, were and are greatly annoyed and disturbed, to the great damage, &c. [*conclusion as ante 664.*] And the jurors, &c. do further present, that the said E. L. on the said, &c. and on the other days and times aforesaid with force and arms, at, &c. aforesaid, near to the chambers and residences of divers subjects of our said lord the king here situate, unlawfully and injuriously did make, and cause and procure to be made divers great and loud sounds and noises, by then and there, to wit, on the days and times aforesaid, hammering and striking, and causing to be hammered and stricken, divers utensils of tin, brass and copper, and divers pieces of tin, brass and copper, and other metals, with divers large hammers and other implements and instruments. By

(n) This was the indictment against Lloyd, A. D. 1800, and settled by an eminent crown lawyer. The defendant was not convicted,

as the prosecutor could not prove that the annoyance was a public nuisance.

reason whereof the subjects of our said lord the king, residing and living near to the said place, where the said last mentioned sounds and noises were so made as aforesaid, were and still are greatly annoyed and disturbed in the occupation and enjoyment of their said chambers and residences, to the great damage, &c. [*conclusion as ante 664.*]

Surrey. That A. B. late of, &c. C. D. late of, &c. and divers other persons (to the jurors aforesaid as yet unknown) being wicked and malicious persons, and not regarding the laws and statutes of\* this realm, nor the pains and penalties therein contained, on, &c. at, &c. aforesaid, a certain turnpike gate, there set up and erected, to prevent passengers from passing by without paying the toll laid, and directed to be paid by an act of parliament, made in, &c. intituled, An act, &c. [*here set out the title of the act, under which the toll is collected*] with force and arms, wilfully, maliciously, and feloniously, did throw down, level and destroy, in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

For cutting down and destroying a turnpike-gate. (o) [\*666]

That W. R. late of, &c. at the several times of the commit-

Indictment against surveyor of highways for using materials obtained for the repairing them on his own premises, and employing public labourers, &c. (p)

(o) See a similar precedent, Cro. C. C. 474. 7 Ed. 740. 2 Starkie, 560. This indictment is framed upon the 13 Geo. III. c. 84. s. 42., by which it is enacted, that if any person shall, either by day or night, wilfully or maliciously pull down, pluck up, throw down, level, or otherwise destroy any turnpike-gate, or any post, rail, wall, or any chain, bar, or other fence belonging to any turnpike-gate or any other chain, bar or fence of any kind whatsoever set up or erected, to prevent passengers from passing by without paying any toll laid or directed to be paid by any act or acts of parliament, made for that purpose, or any house or houses erected for the use of any such turnpike-gate, or any crane, machine or engine made or erected on any turnpike road by authority of parliament for weighing waggons, carts or carriages, or shall forcibly rescue any person being lawfully in custody of any officer or other person, for any of the offences before-mentioned, he shall be adjudged guilty of felony, and either transported for seven years to our foreign plantations, or imprisoned for

any term, not exceeding three years, at the discretion of the judges. The venue may be laid in any county, at the discretion of the party indicting. By 8 Geo. II. c. 20, made perpetual by 27 Geo. II. c. 16, it is felony without benefit of clergy, to pull down or destroy any lock, sluice, or other works erected on a navigable river, by authority of parliament, or to rescue any person imprisoned on such a charge from lawful custody. But a conviction of this offence works no corruption of blood, loss of dower or forfeiture of lands or goods. s. 4. The venue may be laid in any adjacent county of England, s. 3. And now the wilful or malicious breaking, throwing down, damaging, or destroying banks, floodgates, sluices, or other works, and the opening or drawing up any floodgate, or doing any other wilful hurt or mischief to navigation, so as in any manner to obstruct it, is, by 4 Geo. III. c. 12. s. 5. made a single felony, and punished with transportation for seven years.

(p) This was the indictment A. D. 1799, against Robinson, from the Crown Office.

ting of the several offences hereafter-mentioned was one of the surveyors of the highways of the parish of — aforesaid, in the county aforesaid, to wit, at, &c. aforesaid, and that the said W. R. so being such surveyor of the highways as aforesaid, not regarding his duty in that behalf, but minding and intending to promote his own private gain and emolument, at the expense of the inhabitants of the said parish, on, &c. and so forth, and on sixty other days and times then next following, at, &c. aforesaid, unlawfully, wilfully and corruptly, by colour of his said office of surveyor of the highways as aforesaid, did cause and procure divers, to wit, fifty cart loads of gravel, and other materials, which had been then and there dug and got at the costs and charges of the inhabitants of the said parish, for the purpose of repairing the public common highways of the said parish, and which ought then and there to have been laid upon and used in the repairs of such highways to be carried and conveyed to certain gardens, lands and grounds of the said W. R. within the said parish, and there to be laid, spread and used, for his own private gain and emolument, and did then and there unlawfully, wilfully and corruptly, by colour of his said office, cause and procure divers labourers, to wit, &c. [*naming them*] then and there hired and retained at the costs and charges of the said inhabitants of the said parish to get and carry\* gravel and materials, for the purpose of repairing and to repair the highways of the said parish, under the direction of the surveyors of the highways of the said parish, to be employed in the carrying and conveying the said gravel and other materials to the said gardens, lands and grounds of the said W. R. and in there laying, spreading and using the same for the private gain and emolument of the said W. R. when such labourers ought to have been then and there employed, getting gravel and other materials for the purpose of repairing, and in the repairing such highways, and also did then and there unlawfully, wilfully and corruptly, by colour of his said office, cause and procure divers teams, furnished with horses and other cattle, and with men to attend the same, which had been then and there duly sent by divers inhabitants and occupiers of lands, tenements and hereditaments within the said parish, to wit, by, &c. [*naming them*] to perform statute duty for and in the repair of the said highways, under the direction of the surveyors of the highways of the said parish, to be employed in the carrying and conveying of the said gravel and other materials to the said lands, gardens and ground of the said W. R. and in there laying, spreading and using the same for the private gain and emolument of the said W. R. when such teams, and the men attending the same, ought to have been then and there employed in getting, loading and conveying



gravel and other materials, for the purpose of repairing, and in the repairing such highways, contrary to the duty of the said W. R. as such surveyor of the highways as aforesaid, to the evil example, &c. and against the peace, &c.

[*Second count only for procuring gravel dug for the purposes of repairing to be taken to his own premises. Third count, for procuring the public labourers to carry gravel for him. Fourth count, employing the teams sent to perform statute duty to carry gravel for him. Fifth count, for employing the public labourers to dig muck and dirt, and convey it for himself. Sixth count, for employing teams for the same purpose.*]

And the jurors, &c. do further present, that the said W. R. so being such surveyor of the highways as aforesaid, not regarding his duty in that behalf, but minding and intending as aforesaid, on the said, &c. and on sixty other days and times then next following, at, &c. aforesaid, unlawfully, wilfully and corruptly, by colour of his said office, did cause and procure divers other, to wit, one hundred other loads of gravel and other materials, which had been then and there dug and got at the costs and charges of the inhabitants of the said parish, for the purpose of repairing the public common highways of the said parish, and which then and there ought to have been laid upon and used in the repairs of such highways\* as aforesaid to be carried and conveyed to a certain place, called Queen Street, within the said parish, not being one of the public highways of the said parish, and there to be laid, spread and used for his own private accommodation, gain and emolument, contrary to the duty of the said W. R. as such surveyor of the highways as aforesaid, to the evil example, &c. and against the peace, &c.

Seventh count, for embezzeling the gravel got for the parish.

[\*668]

## INDICTMENTS FOR NOT REPAIRING GAOLS.

That within the hundred of M. in the county of C. there now is, and from time whereof the memory of man is not to the contrary, there hath been (r) a certain common gaol of our said lord the king, for the purpose of keeping in safe custody offenders and prisoners within the same, situate and being at M. in the said county, and parcel of a certain tenement commonly called the gaol tenement, otherwise the gaol

Against a mortgagee in possession of a goal of a liberty and hundred court, for not repairing it, whereby the prisoners therein could not be kept safely. (q)

(q) This precedent is from 4 Wentw. 363. where see Mr. Bower's opinion. The indictment does not seem to be framed according to that opinion, as it does not state that the defendant *ratione tenure* was bound to repair, which seems necessary.

See 1 M. and S. 435. 6 East, 315. ante 571, 2.

(r) It should seem by analogy to the decision on indictment for not repairing highways, ante 570, 576. that it is not necessary to aver that the goal was immemorially a goal.

house there, and that on, &c. and continually from thence until the day of taking this inquisition, the said gaol hath been and still is greatly ruinous, in decay, and out of repair, for want of needful and necessary repairing and amending the same, so that offenders and prisoners, during such time, could not, nor can they now be kept in safe and secure custody within the same gaol, as they ought and were wont to be, and still ought to be, to the great hindrance and obstruction of justice, to the great damage of his majesty's liege subjects, and against the peace, &c. And the jurors, &c. do further present, that G. W. late of, &c. for and during all the time aforesaid, was and still is owner and occupier of the said tenement, and that the said G. W. as owner and occupier of the said tenement, and all others the owners and occupiers thereof for the time being, from time whereof, &c. until the time of such nuisance, have repaired and amended, and have been used and accustomed to repair and amend, and the said G. W. still of right ought to repair and amend, the said goal, so being ruinous, in decay, and out of repair as aforesaid, when, and as often as occasion hath required, or shall or may be, or require, and that the said G. W. has not yet done the\* same, &c. [*Second count as occupier only. Third count bailif and keeper of the goal of the liberty of the hundred of M. in the said county of C.*]

Against  
the mayor  
and bur-  
gesses for  
not repair-  
ing the  
gaol of the  
city of  
Glouces-  
ter. (s)

That within the liberties of the said city of G. there now is, and from time whereof, &c. there hath been a certain common gaol of our said lord the king, for the purpose of keeping in safe custody, offenders and prisoners within the same, situate and being partly on and over a certain gateway, called the N. gate, and partly in and parcel of a certain erection or building contiguous to and adjoining upon the said gateway there, and that on, &c. and continually from thence until the day of the taking of this inquisition, the said gaol hath been and still is greatly ruinous, in decay, and out of repair, for want of needful and necessary repairing and amending the same, so that offenders and prisoners, during such time could not, nor can they now be kept and secured in safe and secure custody within the same goal, as they ought and were wont to be, and still ought to be, to the great hindrance and obstruction of justice, to the great damage of his majesty's liege subjects, and against the peace, &c. and that the mayor and burgesses of the said city and county of the same city, from time immemorial, as owners of the said gaol, ought and have been accustomed by right and ancient usage to re-

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(s) This precedent is from Cro. C. C. 8th ed. 318. Cro. C. A. 398. to state obligation to repair, *ratione tenura*. See 1 M. and S. 435, ante 571, 2. Quere, if the indictment ought not

pair and amend, and still of right ought to repair and amend the said gaol, when and as often as occasion should or shall require, and that the said mayor and burgesses have not yet done the same.

## INDICTMENTS, &c. FOR ILLEGAL COMPANIES.

That A. B. late of, &c. [*a number of other defendants*] contriving and intending to prejudice and aggrieve divers subjects of the king in their trade and commerce, under false pretences for the public good, after the 24th of June, 1720, to wit, on, &c. at, &c. did, according to their own device and scheme, make subscriptions towards raising a great sum of money for establishing and setting\* on foot a certain new and unlawful undertaking to the common grievance, prejudice, and inconvenience of great numbers of the king's subjects in their trade and commerce, that is to say, did make subscriptions towards raising a sum not exceeding 20,000*l.* to be divided into more than twenty thousand parts or shares, for the purpose of buying corn, grinding the the same, making bread, and dealing in or distributing of flour and bread, and for other purposes unknown; which undertaking was a public undertaking, and did then and there, and still doth relate to affairs, in which the trade, commerce, and welfare of great numbers of the king's subjects were and are concerned, to wit, at, &c. to the common nuisance of all the king's subjects, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said defendants, on, &c. at, &c. aforesaid, subscribed towards collecting and raising by subscription a great sum of money, not exceeding 20,000*l.* to be divided into not more than 20,000 shares for the purpose of assisting and fa-

On 6 Geo. I. c. 18. s. 16. for raising subscriptions to set on foot a company of a great number of persons, for purpose of selling bread. (i) [*#670*]

Another count.

(i) See forms, 14 East, 406, 15 East, 511. This indictment was founded on the circumstance of a number of persons agreeing to raise 20,000*l.* by subscriptions of 1*l.* a share, for the purpose of buying and grinding corn, making it into bread, and distributing it among the partners. No person could hold more than twenty shares, except they came to him by act of law, marriage, &c. nor could any shares be assigned, except the assignee would enter into a covenant, to conform to all the original regulations of the members. The

jury found a special verdict, that the company, though prejudicial to the trade of particular individuals, was beneficial to the community at large. And, on this, the court held that no judgment could be pronounced against the defendant, the statute constituting some public companies, not sanctioned by act of parliament, public nuisances, did not intend absolutely to make them so, but, to leave their injurious tendency to the decision of a jury. But in cases of improper combination this form would nearly suffice.

Another  
count.

vouring a certain other new and unlawful undertaking, tending to the common grievance, &c. [*as before*] and did then and there pay upon such subscription, certain small sums, amounting in the whole to a large sum, to wit, 30*l.* which said last undertaking was a public undertaking, &c. [*as before.*] And the jurors, &c, do further present, That the said defendants, on, &c. aforesaid, at, &c. aforesaid, presumed to act as if they were a corporate body, and pretended to raise a transferable and assignable stock, without any legal authority, and without any charter from the crown for so doing, that is to say, as a corporate body, for the purpose of buying corn, grinding the same, making bread, and dealing in and distributing of flour and bread, and for other purposes unknown ; and having a number of shares not exceeding 20,000, transferable and assignable by and from the holders of such shares, to any other person or persons, at the pleasure of the holders thereof: to the common nuisance of all the king's subjects, &c. against the form of the statute, &c. and against the peace,\* &c. And the jurors, &c. do further present, That

Another  
count.  
[\*671]

the said defendants, without any legal authority, and without any charter from the crown for so doing, pretended to raise a transferable stock to a large amount, to wit, not exceeding 20,000*l.* to be divided into not more than 20,000 shares, which shares were to be and are transferable and assignable from the holders thereof to any other person or persons, at the pleasure of such holders ; to the common nuisance, &c. and against the statute, &c. That the defendants, contriving and intending as aforesaid, did, according to their own device and scheme, further countenance and proceed in a certain other new and unlawful undertaking, tending to the common grievance, prejudice, and inconvenience of great numbers of the king's subjects in their trade and commerce ; that is to say, an undertaking for the purpose of buying corn, &c. [*as before,*] which last was a public undertaking, and did then and there and still doth relate to affairs, in which the trade, commerce and welfare of great numbers of the king's subjects, were and are concerned, to wit, at, &c. aforesaid, to the common nuisance, &c. against the form of the statute, &c. and against the peace, &c.

Another  
count.

## INDICTMENTS FOR KEEPING UNLICENCED ALE-HOUSES, GAMING HOUSES, &c.

That J. F. late of, &c. victualler. on, &c. and on divers other days and times, as well before as afterwards, at, &c. aforesaid, without any lawful authority, licence, admission, or allowance of two justices of our said lord the king, assigned to keep the peace in the county of M. did take upon himself to keep, and then and there did keep a common ale-house, and in the same house then and there commonly and publicly did sell and utter, and did cause to be\* sold and uttered, ale and beer to divers liege subjects of our said lord the king, in contempt, &c. against the form of the statute, &c. and against the peace, &c. (u)

For keep-  
ing an ale-  
house  
without a  
licence.  
(v)

[\*672]

That A. B. late of, &c. being a common sabbath breaker and profaner of the lord's day, on, &c. and on divers other days respectively, being the Lord's day, and between that day and the day of the taking of the said inquisition, during the time of divine service on each of the said respective days, to wit, at the hour of twelve on each of those days, at the parish aforesaid, in the county aforesaid, in the dwelling house of him the said A. B. there situate, being a common tippling house, did openly sell and utter, and caused to be sold and uttered ale and beer, and other liquors, to divers idle and ill disposed persons, whose names to the jurors aforesaid are as yet unknown, and that the said A. B. on the said, &c. and on divers other days during the time of divine service on each respective day, at, &c. in his said dwelling house did unlawfully and wilfully permit and suffer divers idle, &c. to remain and continue drinking and tippling, to the common nuisance of his majesty's liege subjects, (x) to the evil example, &c. in contempt, &c. and against the peace, &c.

For selling  
ale and  
beer on a  
Sunday.  
(w)

(v) This form is taken from Cro. C. C. 7th Ed. 140. and see 1 Saund. 248. as observed however in 1 Saund. 250. e. n. 3. this does not seem to be an indictable offence, the statute prescribing another specific mode of punishment. It is not the practice to proceed by indictment. See an old precedent against husband and wife for keeping a tippling house, and the husband for being a common barrator, and the wife a common scold, West, 203.; and another against a man for keeping a blind tavern without a sign, being a barrator and his wife a

scold, id. 237. The keeping an alehouse without licence was declared an offence by 5 and 6 Edw. VI. c. 25. and made punishable with confinement for three days, and the finding of sureties. This regulation was enforced by 1. Jac. 1. c. 9. and 4 Jac. 1. c. 4. and several more recent statutes have added pecuniary penalties. See Burn J. Alehouse.

(u) Semble that it would be advisable to add "to the common nuisance," &c.

(w) From Mr. Kaapp's MS.

(x) It seems this is necessary to make the act criminal.

On 25  
Geo. II. c.  
36. for  
keeping  
an unli-  
cenced  
dancing  
house,  
without a  
licence.  
(y)

Second  
count.  
[\*673]

Fourth  
count, for  
a nuisance  
at com-  
mon law.

For keep-  
ing a dis-  
orderly  
house for  
fighting  
cocks, &c.  
(a)

That D. L. late of, &c. and T. L. late of, &c. on, &c. and on divers other days and times, between that day and the day of taking this inquisition, with force and arms, at, &c. aforesaid, and within twenty miles of the cities of L. and W. unlawfully did keep and maintain a certain room and place for public dancing and music, situate in, &c. aforesaid, and within twenty miles of the cities of L. and W. without a licence had for that purpose, from the last preceding Michaelmas quarter sessions of the peace for the county aforesaid, signified under the hands and seals of four or more of the justices there assembled at such session, according to the directions of the statute in such case made and provided, the said dancing and music not being lawfully exercised or carried on, under, or by virtue of any letters patent or licence of the crown, or licence of the lord chamberlain of his majesty's household, (z) to the great damage and common nuisance of all the liege subjects of our said lord the king, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. further present, that the said D. L.\* and T. S. &c. on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully did keep and maintain, within twenty miles, &c. [*as before*] a certain room for public dancing, without a license had for that purpose, from the last preceding Michaelmas quarter sessions of the peace, holden for the county of M. in which the said room is situate, against the form, &c. and against the peace, &c. [*Third count like the second, only using the word "music" instead of "dancing."*] And the jurors, &c. That the said D. L. and T. S. with force and arms, at, &c. aforesaid, on, &c. aforesaid, did keep and maintain a certain common ill governed and disorderly room for public dancing and music; and in said room, for their own lucre and gain, did cause and procure divers persons, as well men as women of evil name and fame, and of dishonest conversation, to frequent and come together, to the great damage and common nuisance of all the liege subjects of our lord the king, and against the peace, &c.

[Commencement as ante 2.] That G. H. late of, &c. and I. K. late of, &c. on, &c. and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at the parish aforesaid, in the county aforesaid, did keep and maintain, and yet do keep

(y) This indictment was settled by Mr. Knapp after much consideration.

(z) The words are clearly unnecessary, as the exception in favour of licenced places, is in a distinct

section. See 1 Sid. 303. 2. Hale, 171. Hawk. b. 2. c. 25. s. 112. Ante 1 Vol. 283, and cases there cited.

(a) This indictment was held good. 2 Burr. 1233. As to bawdy



and maintain, a certain common, ill governed and disorderly house, and in the said house, for his own lucre and profit, certain evil and ill disposed persons of ill name and fame, and of dishonest conversation, to frequent and come together, then, and the said other days and times, there unlawfully and wilfully did cause and procure, and the said persons in the said house then, and the said other days and times there to be and remain, fighting of cocks, boxing, playing at cudgels, and misbehaving themselves, unlawfully and wilfully did permit, and yet doth permit, to the great damage and common nuisance of all the subjects of our said lord the king, inhabiting near the said house, and against the peace of our said lord the king, his crown and dignity.

That W. W. late of, &c. on, &c. being an idle and evil disposed person, and not minding to gain his living by honest labour, on, &c. and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at, &c.\* a certain common gaming house there situate, for his lucre and gain unlawfully and injuriously did keep and maintain, and in the same common gaming house, on, &c. aforesaid, and on the said divers other days and times, there unlawfully and injuriously did cause and procure divers idle and ill disposed persons to frequent and

Against a person for keeping a gaming house or billiards and an E. O. table. [\*674]

houses, see ante 39, n. c. where the precedents on that subject are classed, on account of their more immediate effect on public morals. An information for causing cock-fighting is good at common law. Bac. Abr. Gaming, A. Cockfighting is illegal. See 3 Campb. 146.

(b) See other precedents, 4 Wentw. 156. 6 Went. 384. 1 Bro. 237. For keeping a common raffling shop. Trem. P. C. 241. See in general Hawk. b. 1. c. 92. Com. Dig. Justices of Peace, B. 42. Bac. Abr. Gaming. Burn. J. Gaming. Williams J. Gaming. 4 Bla. Com. 171 to 174. By the common law, the playing at cards, dice, and other games of chance, merely for the purposes of recreation, and without any view to inordinate gain, is regarded as innocent. Bac. Abr. Gaming A. Com. Dig. Justices of Peace, B. 42. and see the preamble to 16 Car. II. c. 7. But a common player at hazard using false dice is liable to be indicted at common law, and sentenced to the pillory on conviction. 2 Rol. Abr. 78. Bac. Abr. Gaming A.; and any person guilty of cheat-

ing, by means of cards or dice, might be fined and imprisoned in proportion to the nature of his offence. Bac. Abr. Gaming A. And all common gaming houses are nuisances, not only from the encouragement to dissipation which they afford, but also from the disturbance they occasion to the people who live near them, by the numbers of idle persons whom they bring together, and the quarrels they necessarily occasion. Hawk. b. 1. c. 75. s. 6.

*Evidence.* The case of gaming houses, like that of other disorderly places, is an exception to the general rule, that evidence can only be adduced as to the specific facts stated on the record—for here general character is the point in issue, and there is no other mode by which the charge can be substantiated, than by proving several instances of gaming, which, if stated, would greatly lengthen the proceedings. 2 Atk. 339. 1 T. R. 752, 4. Besides, the crime is the *keeping* of the house, which is stated with sufficient precision. 1 T. R. 754,

Third  
Count,  
several  
persons  
unknown  
to play at  
E. O.

[\*675]

come together, to game and play, and the same idle and ill disposed persons to be and remain in the said common gaming house, and to game and play together, on, &c. aforesaid, at, &c. and on the said other days and times there did unlawfully and injuriously procure, permit and suffer, by means whereof divers noises, disturbances and breaches of the peace of our said lord the king, then, and on the said other days and times, were there occasioned and committed, to the great encouragement of idleness and dissipation, to the great damage and common nuisance of all the liege subjects of our said lord the king, and against the peace, &c. [*Second count like the first, only saying* "a certain common gaming room in a certain house."] And the jurors, &c. do further present, that the said W. W. being such idle, &c. and not minding, &c. on, &c. aforesaid, and on divers other days, &c. with force and arms, at, &c. aforesaid, a certain common gaming house, there situate, for his lucre and gain, unlawfully and injuriously did keep and\* maintain, and in the said last mentioned gaming house, a certain common gaming table called an E. O. table, for the use and purpose of divers idle and ill disposed persons, whose names to the jurors aforesaid are yet unknown, to resort and frequent, and come together, to play at a certain unlawful game called E. O. did there, to wit, on, &c. aforesaid, and on the said other days and times there unlawfully and injuriously keep and maintain, and did cause and procure, and permit and suffer divers idle, &c. to frequent and come together, to game and play at and with the said common gaming table at the aforesaid game called E. O. and the said idle, &c. to be and remain in the said last mentioned common gaming room, and to game and play together at and with the said common gaming table at the aforesaid unlawful game called E. O. then and there, to wit, on, &c. aforesaid, at, &c. and on the said divers other days and times, at, &c. in, &c. did unlawfully and injuriously procure, permit and suffer, to the great encouragement of idleness, &c. [*as in first count.*] [*Fourth count like the third, with the same difference between the second and first, viz. the substitution of* "a certain common gaming room," &c.]

For keep-  
ing a com-  
mon gam-  
ing house  
to play at  
Faro.

That W. C. late of, &c. being an evil disposed person, and not minding to gain his living by honest labour, on, &c. with force and arms, at, &c. aforesaid, a certain common gaming-house there situate, for his lucre and gain, unlawfully and injuriously did keep and maintain, and in the said common gaming house, on the said, &c. and on the said other days and times, there unlawfully and injuriously did cause and procure divers idle and ill disposed persons to frequent and come together to game, and the said idle and ill disposed

persons to be and remain in the said common gaming house, and to game together on the said, &c. and on the said other days and times, there did unlawfully and injuriously procure, permit and suffer, and the said persons, in the said common gaming house there, on the said, &c. and on the said days and times, by such procurement, permission and sufferance, of the said W. C. did game together, to the great encouragement of idleness and dissipation, to the great damage and common nuisance of all the liege subjects of our said lord the king, and against the peace, &c. Do further present, that the said W. C. being such evil disposed person, and not minding to gain his living by honest labour as aforesaid, on the said, &c. and on divers other days and times, between that day and the said — day of — in the same year, with force and arms at, the parish aforesaid, within the liberty and county aforesaid, a certain common gaming room and place,\* in a certain house there situate, for his lucre and gain, unlawfully and injuriously did keep and maintain, and in the said common gaming room and place, on the said, &c. and on the said last mentioned other days and times, there unlawfully and injuriously did cause and procure divers idle and ill disposed persons to frequent and come together, to game and play, and the said last mentioned idle and ill disposed persons to be and remain in the said common gaming room and place, to game and play together on the said — day of — in the year aforesaid, and on the said last mentioned other days and times, there did unlawfully and injuriously procure, permit and suffer, and the said last mentioned persons, in the said common gaming room and place, on the said — day of — in the year aforesaid, and on the said last mentioned other days and times, by such last procurement, permission and sufferance, of the said W. C. did game and play together, to the great encouragement of idleness and dissipation, to the great damage and common nuisance of all the liege subjects of our said lord the king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said W. C. being such ill disposed person, and not minding to gain his living by honest labour as aforesaid, on the said, &c. and on divers other days and times between that day and the said, &c. with force and arms, at &c. aforesaid, a certain other gaming house there situate, unlawfully and injuriously did keep and maintain, for the gaming and playing at a certain and unlawful game, called Faro, and in the said last mentioned common gaming house, on the said — day of — in the year aforesaid, and on the said last mentioned days and times, there unlawfully and unjustly did cause and procure divers idle and ill disposed persons to frequent and come together, to game and play together at the said unlawful

Second  
count, "a  
certain  
common  
gaming  
room and  
place."

[\*676]

Third  
count.

game called Faro, and the said last mentioned idle and ill disposed persons to be and remain in the said last mentioned common gaming house, and to game and play together at the said unlawful game called Faro, on the said, &c. and on the said last mentioned other days and times there did unlawfully and injuriously procure, permit and suffer, and the said last mentioned persons, in the said last mentioned common gaming house there, on the said, &c. and on the said other days and times, by such last mentioned procurements, permission and sufferance of the said W. C. did game and play together at the said unlawful game called Faro, to the great encouragement, &c. [*as in first count.*] [*Fourth count like the third, saying, "common gaming room and place."*]

[\*667]  
Indictment for  
keeping a  
common  
gaming  
house for  
billiards.  
(c)

[Commencement\* as ante 2.] That S. F. late of, &c. being an evil disposed person, and not minding to gain his livelihood by honest labour, on, &c. and on divers other days and times, between that day and, &c. with force and arms, at, &c. aforesaid, unlawfully and injuriously did keep and maintain a certain common gaming house there situate, for lucre and gain, and in the said common gaming house, on the said, &c. and on the other days and times there, unlawfully and wilfully did cause and procure divers idle and evil disposed persons to frequent and come to play together at a certain unlawful game called billiards, and in the said common gaming house, on the said, &c. and on the said other days and times, there unlawfully and wilfully did permit and suffer the said idle and evil disposed persons to be and remain playing and gaming at the said unlawful game called billiards, for divers large and excessive sums of money, to the great damage and common nuisance of all the liege subjects of our said lord the king, against the peace of our said lord the king, his crown and dignity. [*Second count, "common gaming room," &c.*]

## INDICTMENTS, &c. FOR UNLAWFUL GAMING.

For gaming upon  
18 Geo.  
II. c. 34, s.  
8. (d)

First  
count, for  
winning  
more than  
10l. at a  
sitting.

That A. B. late of, &c. being a person of ill name, fame, and dishonest conversation, on the fourth day of December, in, &c. with force and arms, at, &c. and not within any of the

(c) See form, 6 Went. 384. and ante 673, and notes.

(d) See other precedents, 6 Went. 432. Cro. C. C. 8th ed. 231 Cro. C. C. 7th ed. 435. 437, 8. 4 Wentw. 355. Starkie, 436. *As to the offence* see in general, Hawk. b. 1. c. 92. Bac. Abr. Gaming, Burn. J. Gaming. Williams, J Gaming. Cro. C. C. 232.

3, and notes ante 673, 4. On Gaming houses and the statutes, 2 Geo. II. c. 28. 12 Geo. II. c. 28. 25 Geo. II. c. 36. s. 5. and 16 Car. II. c. 7. The 18 Geo. II. c. 34. s. 8. passed to explain, amend, and render more effectual the laws in being to prevent excessive and deceitful gaming, enacts, that if any person shall win or

palaces of our\* said lord the king, of St. James, or Whitehall, nor within any other royal palace (e) of our said lord the king, was then actually residing (f) did play with dice at a certain game called backgammon; with one C. D. and that the said A. B. then and there, with force and arms, by playing at the said game with the said C. D. as aforesaid, did at one time and sitting, unlawfully win of the said C. D. above the sum of ten pounds at the said game, to wit, the sum of, &c. lawful, &c. against the form of the said statute, &c. and against the peace, &c. And the jurors, &c. further present, that the said A. B. being a person of ill name, fame and dishonest conversation, on the fourth and fifth days of December, that is to say, in the evening or the night of the fourth, and on the morning of the fifth day of December, in, &c. aforesaid, with force and arms, at the said, &c. [*as in first count to the end.*] And the jurors, &c. that the said A. B. being a person of ill fame and dishonest conversation, on the fourth day of December, in the twentieth year aforesaid,

[\*678]

Second count, for same offence on two days.

Third count, for winning 20l. within twenty-four hours, by playing at backgammon.

lose at play, or by betting, at any one time, the sum or value of ten pounds, or, within the space of twenty-four hours, the sum or value of twenty pounds, such person shall be liable to be indicted for such offence within six months after it is committed, either before his majesty's justices of the king's bench, assize, gaol delivery or grand sessions; and being thereof legally convicted, shall be fined five times the value of the sum so won or lost; which fine (after such charges as the court shall judge reasonable, allowed to the prosecutors and evidence out of the same) shall go to the poor of the parish or place where such offence shall be committed, s. 8. But any offender causing another to be convicted will be indemnified himself, and will be a competent witness on the trial, s. 9. In the construction of this statute it has been holden, that a wager on some matter arising from the game and collateral to it, but not on the event itself, is not an offence within it, 1 Salk. 344, Hawk. b. 1. c. 92. s. 47. So that a bet on some dispute, as to the mode of playing a game, is not thus punishable, id. ibid. though if the game were illegal, no action would lie on the part of the winner to recover the sum lost, 2 Hen. Bla. 43. Nor is a wager between two persons, that a third will run a certain distance in a specific

time, within the statute. But it is not necessary, in order to constitute a winning or losing above ten pounds at one time within the words of the act, that there should be no intermission in the play, for it will suffice if the parties remain in company, and only desist to refresh themselves for a short interval. 2 Bla. Rep. 1226. Hawk. b. 1. c. 92. s. 54.

(e) As the penalty is given to the poor of the parish it is said that the offence should be laid to have been committed within a parish, in order that the fine may be regularly applied. Starkie, 477, w. y. But Look-up's case, there cited, was that of a penal action; and if it be correct that no judgment for the fine can be given on an indictment, the reason will not apply, and there will be a clear distinction between the modes of proceeding, 2 Stra. 1048. However the question is of little importance, since the offence must be on general principles, laid in a *ville*, which is now almost uniformly a *parish*.

(f) It is clearly not necessary to negative, or in any way notice this exception, as it is not contained in the enacting clause of the statute, nor does it constitute any part of the description of the offence. See ante 1 vol 283. n. (a) and subsequent notes and numerous cases there cited.

[\*679] with force and arms, at the said, &c. and not within, &c. did play with dice at the aforesaid game called\* the backgammon, with the said C. D. as aforesaid, and did, within the space of twenty-four hours, unlawfully and unjustly win of the said C. D. above the sum of twenty pounds at the said game, to wit, &c. of lawful, &c. against the form, &c. and against the peace, &c. [*Fourth count, varying from the last in the same way that the second does from the first, viz. in laying the offence as partly on the evening and night of one day, and partly on the morning of the other. Fifth count like the first, only laying the day on the sixth instead of the fifth of December. Sixth count like the third, only laying the day on the sixth of December.*] And the jurors, &c. do further present, that the said C. D. on &c. aforesaid, at, &c. aforesaid, and not within, &c. did play at dice at the aforesaid game called backgammon, with one E. F. and that the said A. B. being a person of, &c. with force and arms, then and there, at one time and sitting, did unlawfully and unjustly win of the said C. D. by his the said A. B. then and there betting on the side of him the said E. F. who then and there played with the said C. D. as aforesaid, above the sum of ten pounds, to wit, the sum of, &c. of lawful, &c. against the form, &c. and against the peace, &c. And the jurors, &c. do further present, that the said C. D. on, &c. aforesaid, at, &c. aforesaid, and not within, &c. did play, &c. with the said E. F. and that the said A. B. being, &c. with force and arms, did, within the space of twenty-four hours, unlawfully and unjustly win of the said C. D. by his the said A. B. then and there betting on the side of him the said E. F. who then and there played with the said C. D. as aforesaid, above the sum of twenty pounds, to wit, the sum of, &c. of lawful, &c. against the form, &c. and against the peace, &c. [*Ninth count like the seventh, only laying the day on the sixth of December. Tenth count like the eighth, with the same variation.*]

Seventh count, for winning more than 10l. at a sitting, by betting on the side of another player.

Eighth count, for winning more than 20l. within twenty-four hours by betting.

On 18 Geo. II. c. 24. s. 8. for losing more than twenty pounds within twenty-four hours. (f)

[\*680]

That G. S. late of, &c. on, &c. with force and arms, at, &c. and not within any of the royal palaces of our said lord the king, wherein our said lord the king did then actually reside, (g) did play at dice with T. M. N. esq., at a certain game called *pass dice*, and that the said G. S. with force and arms, by then and there playing at the said game with the said T. M. N. on, &c. aforesaid, within the space of twenty-four, to wit, within the space of five hours, at, &c. in, &c. unlawfully did lose at the said play, to the said T. M. N. above the sum of twenty pounds, to wit, the sum of, &c. to the evil\* example, &c. and against the, &c., and also against the form of the sta-

(f) See form 4 Went. 355.

678, n. f. and 1 vol. 283.

(g) Not necessary, see ante



fute, &c. [*Second count like the first, leaving out the name of the game.*]

That L. W. late of, &c. after the first day of May, in the year of our lord one thousand seven hundred and eleven, to wit, on, &c. at, &c. aforesaid, did, by gaming and playing at cards with N. O. gentleman, win of the said N. O. at one time and sitting, above the sum of ten pounds, that is to say, the sum of one thousand and fifty pounds. And the jurors, &c. do further present, that the said L. U. afterwards, to wit, on, &c. at, &c. aforesaid, did receive, obtain and acquire to himself, of, and from the said N. O., for, and in satisfaction of the said one thousand and fifty pounds, so won as aforesaid, three several promissory notes, each note of the value of three hundred and fifteen pounds, the property of the said N. O. amounting together to the value of nine hundred and forty-five pounds, each of which said notes was signed on the behalf of M. and company, then being bankers in London, intitling the bearer of each of the said respective notes to the sum of three hundred and fifteen pounds, and also one other promissory note of the value of one hundred and five pounds, the property of the said N. O. signed on the behalf of F. C. and company, bankers in London, intitling the bearer thereof to the sum of one hundred and five pounds, to the great damage of the said N. O., to the evil example of all others, &c. against the form of the statute, &c. and against the peace, &c. And the jurors aforesaid do further present, upon their oath aforesaid, that the said L. U. on the said, &c. at, &c. aforesaid, did, by gaming and playing at cards with the said N. O. gentleman, win, obtain and acquire to himself, at one time and sitting, above the sum of ten pounds, that is to say, the sum of one thousand and fifty pounds, of, and from the said N. O. to the great damage, &c. [*as supra.*]

[*Commencement as ante 2.*] That R. H. late of, &c. not regarding the laws and statutes of this realm, nor fearing the pains and penalties contained therein, on, &c. with force and arms, at, &c. aforesaid, by fraud, shift, cozenage, circumvention, deceit, unlawful device, and ill practice in playing with dice, did win, obtain, and acquire to himself, twelve pounds nineteen shillings and sixpence of lawful, &c. of the monies of one G. D. of, and from him the said G. D., in, and by playing with him the said G. D. at dice, to\* the great damage of the said G. D., against the form of the statute, &c. and against the peace, &c.

On 9 Ann, c. 14. For winning above ten pounds at cards, at one time and sitting. (g) First count, stating that defendant won of, &c. so much, and received notes for the money. (g)

Second count, stating a playing, by which he acquired, &c. omitting the notes.

For fraudulently winning money at dice. (h)

[\*681]

(g) Cro. C. C. 8th Ed. 231. 7th Ed. 435. C. C. 8th Ed. 231. 7th Ed. 439. Starkie, 476.—*As to the offence,*

(h) See other Precedents. Cro. see in general Hawk. b. 1. c. 92.

## INDICTMENTS FOR SELLING OFFICES, BRIBERY, &c.

Indictment for corruptly agreeing to receive the office of distributor of stamps for the county of Dorset, on condition of allowing the former possessor to have the profits for life.

(i)  
[\*682]

That before, and at the time of the committing the offence herein after next mentioned, one W. W. since deceased, was an officer and person duly appointed and authorized by our sovereign lord the now\* king, to manage the duties on stamped vellum parchment and paper, in a certain office, to wit, in a certain office relating to the reve-

Bac. Abr. Gaming, Burn, J. Gaming. Williams, J. Gaming. Cro. C. C. 232, 3. and notes ante 673, 4. 677, 8. on Gaming Houses. This indictment is framed on 9 Ann, c. 14. s. 5. 6. which enacts, that if any person shall by *fraud* or shift, cozenage, deceit, circumvention or unlawful device, or ill practice whatsoever, in playing at or with cards, dice, or at any of the games therein mentioned, or in or by bearing a share or part in the stakes, wagers and adventures, or in or by betting on the sides or hands of such as do or shall play as aforesaid, win, obtain, or acquire to himself or to any other, any money or other valuable thing whatsoever, or shall, at any one time or sitting, win of any one or more person or persons whatsoever above the value of 10*l*; and be convicted of any of the said offences, upon an indictment or information to be exhibited against him for that purpose, he shall forfeit five times the value of the money, or other thing so won as aforesaid; and in case of such ill practice as aforesaid shall be deemed infamous, and suffer such corporal punishment as in cases of wilful perjury, and such penalty to be recovered by such person as shall sue for the same, to be recovered by such action as aforesaid. A foot race is a game within this statute, 2 Wills. 40. and so is a wager that a man will be found to carry a certain weight on foot, within a specific time, Cowp. 281. Cricket and horse racing are also holden to be games within its meaning, 1 Wills. 220. 2 Stra. 1159. And it has been determined that a bet of ten pounds to five pounds upon a horse-race is illegal, although the race itself be for a legal plate; for though the

smaller sum is less than that fixed by the act, as the party betting the higher sum would not be liable to pay it, if he lost, there is no mutual risk incurred to render the contract binding. 2 Bla. Rep. 706. *Modes of Prosecution* are pointed out in the statute to be either by information or indictment. The action for the penalty seems to be distinct from them both, and intended as the substantial remedy. For it has been holden that, on conviction on an information, the court cannot give sentence for a fine to five times the amount of the sum won, but merely "*quod convictus est.*" And an action must be brought on the judgment for the recovery of the forfeiture, 2 Stra. 1048. It seems that if the loser prefer an indictment, and the grand jury find the bill, which is afterwards quashed, the court will not permit an information to be filed, because another bill may be found for the same offence, 8 Mod. 187.

(i) *As to the offence of selling offices in general, &c.* see 3 Inst. 145 to 149. Hawk. b. 1. c. 67. 49 Geo. III. c. 126. Bac. Ab. Offices and Officers F. The sale or purchase of public offices is highly criminal at Common Law: for nothing can be more disadvantageous to the welfare of the state, than that its higher capacities should be filled, not by those who are most able to discharge them, but those who can pay most to obtain them, Hawk. b. 1. c. 67. s. 3. 2 Campb. 229. 1 Bro. C. C. 124. 3. P. W. 391. 1 Hen. Bla. 322. 7. It is equally a crime to give as to receive, and in many cases, the attempt itself is an offence, complete on the side of him who offers it, 4 Burr. 2500. The sale of offices is

nue of our said lord the king, that is to say, as a distributor of such stamped vellum parchment and paper in and for the county of D., and a receiver of the revenue of our said lord the king, arising from his, the said W. W's. distributing such stamps as aforesaid, to wit, for certain reward to him the said W. W. in that behalf, at, &c. And the jurors, &c. do further present, that heretofore, to wit, on, &c. it was corruptly, and against the form of the statute in such, &c. agreed by and between the said W. W. since deceased, and J. W. late of, &c. yeoman, as follows, that is to say, that the said W. W. should, for the considerations hereinafter next mentioned, resign and relinquish his said office and employment in favor of the\* said J. W. and should cause and procure the said W. W. to be retained and employed by the commissioners, appointed and authorised by his majesty to manage the duties on stamped vellum for parchment and paper, in and for the said county of D., and as such receiver as aforesaid, in lieu and stead of him, the said W. W. and that the said J. W. should for, and in consideration of the premises, permit and suffer the said W. W. for and during his natural life; notwithstanding such his relinquishment of such his said office as aforesaid, and such retainer and employment of the said J. W., in the same, in lieu and stead of the said W. W. as aforesaid, to continue to exercise the same, and to receive and take to his own proper use and benefit all the emoluments

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further prevented by 2 Ric. 2. c. 2. which directs the chancellor, treasurer, keeper of the privy seal, steward of the king's house, chamberlain, clerk of the Rolls and judges, and all others who may have the appointment of any officer or minister of the king, shall be sworn not to nominate any person for reward, favour, or affection. By 4 Hen. 4. c. 5. sheriffs are forbidden to let another farm their office. And by 5 & 6 Edw. 6. c. 11. if any person bargain, sell, take, or promise any reward for any office, or deputation to any office, concerning the revenue, the keeping of the king's castles and domains, the customs, or the administration of justice, unless it be such an office as, before the statute, had usually been granted by the judges of the king's bench, common pleas, or Justices of assize, shall not only forfeit the office, and his right to nominate the party by whom it shall be filled, but be disabled for ever from enjoying it; and the party

bribing shall be subject to a similar disability. And it is holden that no person thus disabled can ever be restored to the capacity he has lost by any grant or dispensation of the crown. Hawk. b. 1. c. 75. s. 5. The act extends to the offices of chancellor, register and commissary in the ecclesiastical courts, because matters come before those tribunals affecting the administration of justice. Hawk. b. 1. c. 67. s. 4. But no office in fee is within it, nor does it extend to any employments in the plantations, 2 Lev. 151. Salk. 411, though it is criminal at common law to dispose of the latter, if granted under the great seal 4 Burr. 2500. And, in addition to forfeiture of office, prescribed by the statute, every species of bribery is punishable with imprisonment and fine at the discretion of the court in which the defendant is convicted. Hawk. b. 1. c. 67. s. 6, 7. 6 St. Tr. 477. Further regulations introduced by 49 Geo. III. c. 126.

and reward which should and might arise therefrom. And the jurors, &c. do further present, that in pursuance of the said corrupt and unlawful agreement, and on the terms, and in pursuance thereof, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, the said W. W. at the special, &c. of the said J. W. did resign and relinquish his said office and employment in favour of the said J. W. and did then and there, at the like special instance and request of the said J. W. cause and procure him the said J. W. to be duly retained and employed, and the said J. W. was accordingly duly retained and employed by certain then commissioners, appointed and authorized by his majesty to manage the duties on stamped vellum, parchment and paper, in the said office of such distributor of such stamped vellum, parchment and paper, as aforesaid, in and for the said county of D. and as such receiver as aforesaid, in lieu and stead of him the said W. W. and that the said J. W., in further pursuance of the said corrupt and unlawful agreement, and in consideration of the premises afterwards, and for, and during the natural life of him the said W. W., to wit, from the day and year aforesaid, until afterwards, to wit, on, &c. when the said W. W. died, to wit, at, &c. aforesaid, did permit and suffer the said W. W. notwithstanding his said relinquishment of his said office as aforesaid, and the said retainer and employment of the said J. W. in the same, in lieu and stead of the said W. W. as aforesaid, to continue to exercise the same, and to receive and take to his own proper use and benefit, and the said W. W. did accordingly, during that time, continue to exercise the said office, and to take to his own proper use and benefit all the emoluments and reward which did during that time arise therefrom, to wit, at, &c. aforesaid, in contempt, &c. to the evil and pernicious example, &c. and against the form of the statutes, &c.

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 Information for attempting to bribe a first lord of the treasury, in order to procure the reversion of an office in Jamaica. First count, for sending a letter to the

[Commencement as ante 7.] That the office of chief clerk to attend the supreme court, residing in the town of St. Jago de la Vega, otherwise Vaga, within his majesty's island of Jamaica in America, now\* is, and for divers years last past hath been, an office of great trust, concerning the administration and execution of justice, within the said island of Jamaica, and that the said chief clerk, to attend the said supreme court, for the time being, by himself, or by his deputy or deputies, hath for a long time, to wit, for the space of twenty years and upwards, now last past, signed and sealed writs, and other process, and still doth sign and seal writs and other process, issuing out of the said supreme court, and also during all that time hath entered, and still doth enter decrees and other proceedings in, and keep the records of the same court, and that the said office hath been, and is in

the gift and disposal of the king of this realm, by grant, under the great seal of Great Britain, and before the committing any of the offences hereinafter mentioned, had been granted by the lord George the second, late king of Great Britain, &c. by his letters patent, under the great seal of Great Britain, bearing date at Westminster, on the twenty fifth day of September, in the eighth year of his reign, of his special grace, certain knowledge and mere motion, unto J. L. N. P. esquires, and A. F. gentleman, for and during the term of their natural lives, and the life of the longest liver of them, and that the said J. L. and N. P. before the committing of any of the offences hereinafter mentioned\* died, and the said A. F. survived them, and is still living, that is to say, at Westminster aforesaid, in the said county of Middlesex, and the said coroner and attorney of our said present sovereign lord the king, who prosecutes as aforesaid, further gives the court here to understand, and be informed, that A. H. duke of G., at the respective times of the committing the offences hereinafter mentioned, and before and still is, one of the commissioners of our said present sovereign lord the king, for executing the office of treasurer of the exchequer of our said present sovereign lord the king, and the first named commissioner in the letters patent of our said present sovereign lord the king, under the great seal of Great Britain, in that behalf granted, and also one of the privy council of our said present sovereign lord the king, and in

minister,  
inclosing  
an affida-  
vit. (k)

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(k) *See other Precedents.* Cro. C. 455. 2 Ld. Raym. 1116. 2 East, 5. 2 Camp. 231. 4 Burr. 2494. *The offence.* A solicitation to commit a crime, though nothing be done in pursuance of such solicitation, is now completely established to be itself an indictable offence. 2 East, 5. Thus an attempt to bribe a privy councillor, to procure a reversionary patent of an office grantable by the king under great seal, is indictable, though it did not succeed, and an information will be granted. 4 Burr. 2495. 2 Campb. 231. An attempt to bribe at elections to Parliament is criminal for the same reason, 4 Burr. 2500. So a promise of money to a corporator to vote for a member of a corporation is criminal, 2 Ld. Raym. 1377. 4 Burr. 2501. *Indictment.* In a criminal information for offering a bribe to an officer of the customs to pass certain goods about to be imported, the allegation that the object of the at-

tempt was to induce him to suffer them to be conveyed to another place than the quay or wharf appointed for the landing of them, and that an order had been made to land them at the quay or wharf appointed for the landing such goods, has been holden to be insufficient, if the evidence prove that the order was to deliver them at the king's warehouses, though they stand on the quay referred to, 5 Esp. Rep. 231. *Punishment.*—The judgment at common law for soliciting to commit felony or other enormous offence may be fine, with imprisonment or pillory at the discretion of the court in which the defendant is convicted. Of course, the degree as well as the species of punishment varies according to the kind of offence which the solicitation is intended to produce. In the case of Higgins, the sentence was two years imprisonment and exposure in the pillory. 2 East, Rep. 5.

great trust and confidence with our said present sovereign lord the king, that is to say, at Westminster aforesaid, in the said county of Middlesex. And the said coroner and attorney of our said present sovereign lord the king, who prosecutes as aforesaid, further gives the court here to understand and be informed, That W. J. late of, &c. well knowing the premises, but unlawfully, wickedly, and corruptly devising, intending and contriving to tempt, seduce and corrupt the said A. H. duke of G., so being one of the commissioners for executing the office of treasurer of the exchequer of our said present sovereign lord the king, and one of the privy council of our said present sovereign lord the king, and in great trust and confidence with our said present sovereign lord the king as aforesaid, to prostitute and betray the duties of his said offices and stations, and the trust and confidence placed and reposed in him by our said present sovereign lord the king, on, &c. with force and arms, at, &c. a certain letter wrote by him the said W. J., and addressed to the said duke of G., and also a certain paper writing, purporting to be an affidavit of him the said W. J., and to have been sworn by the said W. J. before S. T. esquire, then lord mayor of the city of London, unlawfully, wickedly, and corruptly, did send and deliver, and cause and procure to be sent and delivered, to the said duke of G. so being one of the commissioners of our said lord the now king, for executing the office of treasurer of his majesty's exchequer, and one of his majesty's privy council, and in great trust and confidence with his majesty as aforesaid, in order to procure our said present sovereign lord the king, by his letters-patent, under the great seal of Great Britain, to grant the reversion of the said office of the chief clerk to attend the supreme court, residing in the town of St. Jago de la Vega, otherwise Vaga, within the said island of Jamaica, for the term of the natural lives of B. J. M. J. and J. J. sons of the said W. J., or for the lives of three other persons, to be nominated by him\* the said W. J. upon the same conditions as are mentioned in the letters-patent of his said late majesty, for a pecuniary reward, to be paid to him the said duke of G., the tenor of which letter is as follows: My lord duke—(meaning the duke of G.) The strict honour of Mr. H. N.—(meaning one H. N. of H. in the said county of Middlesex, a person well known to the said duke of G.) as well as his (meaning the said H. N.'s) very sincere regard for your grace, (meaning the said duke of G.) rendered him in my opinion the properest person to entrust with a proposition that required the utmost secrecy; but his (meaning the said H. N.'s) delicacy preventing, I (meaning himself the said W. J.) am by the nature of it precluded from every other method but immediate application to your grace, (meaning

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the said duke of G.) in which I (meaning himself the said W. J.) am confirmed by Mr. H.'s (meaning one J. H.'s applying yesterday,) to purchase a resignation of the patentee, who is my (meaning his the said W. J.'s) friend: the inclosed affidavit (meaning and alluding to the said paper writing, purporting to be an affidavit as aforesaid) will shew the proposal, which will be encreased if necessary, and would your grace (meaning again the said duke of G.) indulge me (meaning himself the said W. J.) by perusing the case, I (again meaning himself the said W. J.) trust it would appear that I (again meaning himself the said W. J.) have a pretension in preference to any other, I (again meaning himself the said W. J.) will take an opportunity of waiting upon your grace, (meaning the said duke of G.) hoping the honour of a conference; otherwise to receive back the affidavit (meaning again the said paper writing purporting to be an affidavit) in order to destroy the same. I (again meaning himself the said W. J.) am your grace's most obedient and most humble servant, W. J. (again meaning himself the said W. J.) Fenchurch Street, 10th June, 1769. His grace the duke of G. And the tenor of which said paper writing purporting to be an affidavit is as follows: that is to say, "London to wit, this day appeared before me W. J. of London, merchant, (meaning the said W. J.) and made oath upon the holy evangelists, that he (meaning the said W. J.) being informed that Mr. H. (meaning the said J. H. had said, that he either expected or was promised the reversion of the clerk of the court's office in the island of Jamaica; (meaning the said office of the chief clerk, to attend the supreme court residing in the town of Saint Jago de la Vega, otherwise Vaga, within the said island of Jamaica;) and as he this deponent (meaning the said W. J.) apprehends, that he (meaning the said W. J.) has some degree of merit in what he (again meaning the said W. J.) has already done to promote public security of property, by the regular recording judgments, &c. and in properly conducting\* the said office; and that as his (meaning the said W. J.'s.) own interest renders necessary the continuing the same regularity; therefore he this deponent (meaning the said W. J.) doth hereby voluntarily promise and engage, that in case the reversion of the said office shall be made and procured for the natural lives of his three sons, B. J. M. J. and J. J. or for the lives of three other persons to be nominated by him (meaning the said W. J.) which ever shall be proposed, upon the same conditions as are mentioned in the last patent (meaning the said letters patent of his said late majesty, hereinbefore mentioned) for that office, that then he this deponent (meaning the said W. J.) will, upon the same patent being delivered to him, (meaning the said W. J.) pay into the

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Second  
count, for  
proposing  
to the mi-  
nister that  
if he would  
procure  
the office,  
defendant  
would pay  
5,000*l.* in-  
to the  
hands of,  
&c.

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hands of Mr. H. N. (meaning the said H. N. above mentioned) or to his order, five thousand pounds, of lawful money, to be paid to the person or persons who procures the said patent, or, if required, lodge security in the hands of Mr. H. N. for the payment of the said sum of five thousand pounds sterling, as soon as the said patent is made out and delivered to him this deponent, (meaning the said W. J.) And this deponent (meaning the said W. J.) further saith, that he never hath, directly, or indirectly, mentioned, or given the least intimation of his intention, design, or proposition, touching this matter, to any person or persons except to the said Mr. H. N. And this deponent (meaning the said W. J.) further saith, that whether this proposition should be approved, accepted, and be efficacious, or otherwise rejected, that in either case he this deponent (meaning the said W. J.) will never, at any time or times, divulge, mention, or give intimation of his intentions, offer, proposition, or agreement, relative to this matter, to any person or persons whatsoever, except the said Mr. H. N. (meaning the said H. N.) And further, this deponent (meaning the said W. J.) saith not. W. J. (meaning the said W. J.) sworn at the Mansion-House, in London, this twenty-third day of March, in the year of our Lord one thousand seven hundred and sixty-seven, before me S. T. mayor; at the foot or bottom of which said paper writing there is a certain note or memorandum, in writing, according to the tenor following, that is to say, "N. B. Mr. A. F. (meaning the said A. F. above named) has two patents, namely, for the clerk of the crown, and clerk of the peace, in the island of Jamaica; (meaning the said office of chief clerk, to attend the supreme court, residing in the said town of Saint Jago de la Vega, otherwise Vaga, within the said island of Jamaica;) and it is the last Mr. J. (meaning the said W. J.) is particularly desirous to obtain," to the great dishonour of the said Duke of G., to the evil and pernicious example, &c. and against the peace, &c. And the said coroner and attorney of, &c. That the said W. J. again unlawfully, wickedly and corruptly, devising,\* intending and contriving, to tempt, seduce and corrupt, the said A. H. Duke of G. so being one of the commissioners for executing the office of treasurer of the exchequer of our said lord the now king, and one of the privy council of our said lord the now king, and in great trust and confidence with our said lord the now king as aforesaid, to prostitute and betray the duties of his said offices and stations, and the trust and confidence placed and reposed in him by our said lord the now king; he the said W. J. on the said tenth day of June, in the said ninth year of the reign of our said lord the now king, with force and arms, at, &c. aforesaid, unlawfully, wickedly

and corruptly, did propose and offer, and caused to be proposed and offered, to the said duke of G. that in case he the said duke of G. would procure our said lord the now king, by his letters patent under the great seal of Great Britain, to grant the reversion of the said office of chief clerk to attend the supreme court above mentioned, for the natural lives of three sons of the said W. J. namely, B. J. M. J. and J. J. or for the lives of three other persons to be nominated by him the said W. J. upon the same conditions as are mentioned in the said letters patent of his said late majesty, that then he the said W. J. would, upon such letters patent of our said lord the now king being delivered to him the said W. J., pay into the hands of one H. N. (a person well known to the said duke of G.) or to his order, five thousand pounds of lawful money of Great Britain, to be paid to the said duke of G. as a consideration and reward to the said duke of G. for procuring our said lord the now king to grant the reversion of the said office in manner aforesaid, to the great dishonour, &c. (*as before.*) And the said coroner and attorney of, &c. that the said W. J. again unlawfully, wickedly and corruptly, devising and intending, and contriving to tempt, seduce, and corrupt the said A. H. duke of G. so being one of the commissioners for executing the office of treasurer of the exchequer of our said lord the now king, and one of the privy council of our said lord the now king, and in great trust and confidence with our said lord the now king as aforesaid, to prostitute and betray the duties of his said offices and stations, and the trust and confidence so placed and reposed in him by our said lord the now king, he the said J. W. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, in, &c. did unlawfully, wickedly and corruptly, propose and offer, and cause to be proposed and offered to the said duke of G. that in case he the said duke of G. would procure our said lord the now king, by his letters patent under the great seal of Great Britain, to grant the reversion of the said office of chief clerk, to attend the supreme court above mentioned, for the natural lives of three sons of\* the said W. J. namely, B. J. M. J. and J. J. or for the lives of three other persons to be nominated by him the said W. J. upon the same conditions as are mentioned in the said letters patent of his said late majesty, that then he the said W. J. would lodge a security in the hands of one H. N. (a person well known to the said duke of G.) for the payment of the sum of five thousand pounds of lawful money to the said duke of G. as soon as such letters patent of our said lord the now king should be made out and delivered to him the said W. J. as a reward to the said duke of G. for procuring our said lord the now king to grant the reversion of the said office in manner aforesaid, to the great dishonour, &c. (*as before.*)

Third count, that if, &c. he the defendant would lodge a security for 5,000*l.* in the hands of, &c.

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Information by Attorney General against a Revenue officer, for corruptly giving up goods forfeited, and taking bribe, on statute 24. Geo. III. c.

[*Commencement of information as ante 6.*] That heretofore, to wit, on, &c. at, &c. J. L. being then and there an officer of the customs of our said lord the king, did seize and arrest as forfeited certain goods and merchandizes, to wit, divers Bandanna handkerchiefs, which said goods and merchandizes were then and there by law liable to forfeiture, and that it was then and there the duty of the said J. L. as such officer of the customs as aforesaid, to detain, keep and secure the said goods and merchandizes so seized and arrested as forfeited, as aforesaid, in order to the condemnation of the same goods and merchandizes so seized by due course of law. And the said attorney general, &c. that the said J. L. late of, &c. well knowing the premises, but having no regard for the laws and statutes of this realm, nor for the penalties and forfeitures therein and thereby mentioned and provided, and unlawfully and corruptly devising, contriving and intending to cheat and defraud our said lord the king in his revenue of customs, and wholly disregarding his duty as such officer of the customs as aforesaid, in the behalf aforesaid, after the first day of October, which was in the year of our lord 1784, to wit, on the said, &c. at, &c. aforesaid, did unlawfully and corruptly, and without any authority in that behalf, deliver up to one D. J. the said goods and merchandizes so seized and arrested as aforesaid, and so liable to forfeiture as aforesaid; in contempt, &c. to the evil, &c. and against, &c. and also against the form, &c. by reason whereof, and by force of, &c. the said J. L. has forfeited and lost the sum of two hundred pounds, of lawful, &c.

Second count.

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And the said attorney-general, &c. that heretofore, to wit, on, &c. at, &c. the said J. L. then and there being such officer of the customs as aforesaid, did find in the shop of one D. J. there situate, certain other goods and merchandizes, to wit, divers other Bandanna Handkerchiefs, which said last mentioned goods and merchandizes were then and there by law liable to forfeiture, and that it\* was then and there the duty of the said J. L. as such officer of the customs as aforesaid, then and there to seize and arrest, as forfeited, the said last mentioned goods and merchandizes, and to detain, keep and secure the same, in order to the condemnation of the said last mentioned goods and merchandizes, by due course of law. And the said attorney-general of our said, &c. giveth, &c. that the said J. L. well knowing the premises, but having no regard for the laws and statutes of this realm, nor for the penalties and forfeitures therein and thereby mentioned and provided, and unlawfully and corruptly devising, contriving and intending to cheat and defraud our said lord the king in his said revenue of customs, and wholly disregarding his duty as such officer of the customs as

aforesaid, in the behalf last aforesaid, and after the said first day of October, which was in the said year of our Lord 1784, to wit, on, &c. aforesaid, at, &c. aforesaid, did unlawfully and corruptly, and contrary to the duty of his said office, make a collusive seizure of the said last mentioned goods and merchandizes so liable to forfeiture, as last aforesaid, by then and their seizing and taking away the same from the said shop of the said D. J. with a corrupt understanding at the time of such seizure, by and between the said J. L. and the said D. J. that the same goods and merchandizes should afterwards be unlawfully and corruptly given back and restored to the said D. J. instead and in lieu of the said last mentioned goods and merchandizes being by the said J. L. detained, kept and secured, in order to the condemnation of the same by due course of law; in contempt of our said lord the king and his laws, to the evil and pernicious example of all others, and against the peace of, &c. and also against the form of, &c. by reason whereof, &c. *[as in conclusion of first count.]*

And the said attorney-general, &c. that heretofore, to wit, on, &c. at, &c. the said J. L. being then and there such officer of the customs as aforesaid, did serve and arrest as forfeited in the said shop of the said D. J. certain other goods and merchandizes, to wit, divers other Bandanna handkerchiefs, which said last mentioned goods and merchandizes were then and there by law liable to forfeiture, and that it was then and there the duty of the said J. L. as such officer of the customs as aforesaid, to detain, keep and secure the said last mentioned goods and merchandizes so seized and arrested as forfeited, in order to the condemnation of the said last mentioned goods and merchandizes by due course of law. And the said attorney-general of our said, &c. that he the said J. L. well knowing the premises, but having no regard for the laws and statutes of this realm, nor for the penalties and forfeitures therein and thereby mentioned and provided, and unlawfully and corruptly devising,\* contriving and intending to cheat and defraud our said lord the king, in his said revenue of customs, and wholly disregarding his duty as such officer of the customs as aforesaid, in the behalf last aforesaid, after the said first day of October, which was in the said year of our Lord 1784, to wit, on the said, &c. at, &c. aforesaid, did unlawfully and corruptly make an agreement with the said D. J. that he the said J. L. would deliver up to the said D. J. the said last mentioned goods and merchandizes so seized and arrested as aforesaid, and so liable to forfeiture as aforesaid; in contempt, &c. and against the peace, &c. and also against the form, &c. by reason whereof, &c.

Third  
count

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Fourth  
count, re-  
ceiving a  
bribe.

And the said attorney-general of, &c. that heretofore, to wit, on, &c. at, &c. the said J. L. being then and there such officer of the customs of our said lord the king as aforesaid, did seize and arrest as forfeited, certain other goods and merchandizes, to wit, divers other Bandanna handkerchiefs, which said last mentioned goods and merchandizes were then and there by law liable to forfeiture, and that it was then and there the duty of the said J. L. as such officer of the customs as aforesaid, to detain, keep and secure the said last mentioned goods and merchandizes, in order to the condemnation of the same by due course of law, and the said attorney-general of, &c. that the said J. L. well knowing, &c. but having no regard, &c. unlawfully and corruptly devising, contriving and intending, &c. and wholly disregarding his duty in the behalf last aforesaid, after the said, &c. to wit, on, &c. at, &c. did unlawfully and corruptly directly take and receive of and from the said D. J. a certain bribe, gratuity, recompense and reward, of a certain large sum of money, to wit, the sum of eight pounds, and to perform the duty of him the said J. L. in so detaining, keeping and securing the said last mentioned goods and merchandizes, so seized and arrested as aforesaid, and so liable to forfeiture as aforesaid, and contrary to, and in violation of, the duty of his said office, to relinquish the possession of the same goods and merchandizes, so that the same, although secured and arrested as aforesaid, should not be secured in order to the condemnation thereof as aforesaid; in contempt, &c. to the evil example, &c. and also against the form, &c. by reason whereof, &c. And the said attorney-general of, &c. that heretofore, to wit, on, &c. at, &c. aforesaid, the said J. L. being then and there such officer of the customs of our said lord the king as aforesaid, did serve and arrest as forfeited, certain other goods and merchandizes, to wit, divers other Bandanna handkerchiefs, which said last mentioned goods and merchandizes were then and there by law liable to forfeiture, and that it was then and there the duty of the said J. L. as such officer of the customs as aforesaid, to detain, keep\* and secure the said last mentioned goods and merchandizes, in order to the condemnation of the same by due course of law. And the said attorney general of, &c. for, &c. giveth the court here further, &c. that the said J. L. well knowing, &c. but having no regard, &c. and unlawfully and corruptly devising, &c. and wholly disregarding his duty in the behalf last aforesaid, after the said, &c. to wit, on, &c. at, &c. did unlawfully, corruptly and indirectly, take and receive of and from the said D. J. a certain bribe, gratuity, recompense and reward, of a certain other large sum of money, to wit, the sum of eight pounds, not to perform the duty of him the said J. L. in so detaining, keep-

Fifth  
count, for  
receiving  
a bribe.

[\*692]



ing and securing the said last mentioned goods and merchandizes so seized and arrested as aforesaid, and so liable to forfeiture as aforesaid, and contrary to, and in violation of, the duty of his said office, to relinquish the possession of the same goods and merchandizes, so that the same, although seized and arrested as aforesaid, should not be secured, in order to the condemnation thereof as aforesaid ; in contempt, &c. to the evil example, &c. and also against the form, &c. by reason whereof, &c.

And the said attorney-general of, &c. for, &c. giveth, &c. that heretofore, to wit, on, &c. at, &c. the said J. L. being then and there such officer of the customs of our said lord the king as aforesaid, did seize and arrest as forfeited, certain other goods and merchandizes, to wit, divers other Bandanna handkerchiefs, which said last mentioned goods and merchandizes were then and there by law liable to forfeiture, and that it was then and there the duty of the said J. L. as such officer of the customs as aforesaid, to detain, keep, and secure the last last mentioned goods and merchandizes, in order to the condemnation of the same by due course of law. And the said attorney-general of, &c. that the said J. L. well knowing, &c. but having no regard, &c. and unlawfully and corruptly devising, &c. to cheat and defraud our said lord the king in his said revenue of the customs, and wholly disregarding his duty in the behalf last aforesaid, after the said, &c. to wit, on, &c. at, &c. did unlawfully and corruptly directly take and receive of and from the said D. J. a certain bribe, gratuity, recompence and reward, of a certain other large sum of money, to wit, a share of the sum of eight pounds, to be divided between him the said J. L. and one J. M. and one C. C. and one S. C. and one G. C. and not to perform the duty of him the said J. L. in so detaining, keeping and securing the said last mentioned goods and merchandizes so seized and arrested as aforesaid, and so liable to forfeiture as aforesaid, and contrary to, and in violation of, the duty of his said office, to relinquish the possession of the same goods and merchandizes, so that the same, although seized and arrested as aforesaid, and so liable\* to forfeiture as aforesaid, and contrary to, and in violation of, the duty of his said office, to relinquish the possession of the same goods and merchandizes, so that the same, although seized and arrested as aforesaid, should not be secured, in order to the condemnation thereof as aforesaid ; in contempt of, &c. to the evil example, &c. against the peace, &c. and also against the form, &c. by reason whereof, &c. Whereupon, &c. [*common conclusion ante 6.*]

Sixth count, for receiving a bribe.

[\*693]

[*Commencement of information as ante 6.*] That heretofore, to wit, on, &c. at, &c. in, &c. certain goods and merchan-

Information by at-

torney general, for offering to bribe revenue officers to give up and to refrain from seizing goods forfeited on 24 Geo. III. c.

[\*694]

Second count.

dizes, to wit, divers pairs of foreign manufactured leather gloves, that is to say, gloves of the manufacture of France, and a large quantity of foreign wrought silk, that is to say, wrought silk of the manufacture of France, and a certain other large quantity of foreign silk, which had become forfeited by virtue of certain acts of parliament relative to his majesty's customs, then and still in force, were hidden and concealed in a certain house there situate. And that E. S. and J. C. being officers of the customs of our said lord the king, did, according to the duty of their several and respective offices, then and there proceed to the said house, for the purpose of discovering the said goods and merchandizes so then and there hidden and concealed as aforesaid, and seizing the same as forfeited, as aforesaid, the same goods and merchandizes being then and there liable to be lawfully seized by the said E. S. and J. C. as such officers of the customs as aforesaid. And that the said E. S. and J. C. so being then and there such officers of the customs as aforesaid, did then and there, for the purpose aforesaid, proceed to search and examine the said house. And the said attorney-general, &c. that C. F. late of, &c. linen draper, well knowing the premises, but having no regard for the laws and statutes of this realm, nor for the penalties and forfeitures therein and thereby mentioned and provided, and unlawfully devising, contriving and intending to cheat and defraud our said lord the king in his revenue of the customs, after the first day of October, which was in the year, &c. to wit, on the said, &c. at, &c. aforesaid, did unlawfully and corruptly offer to give to the said E. S. and J. C. being then and there such officers of the customs as aforesaid, a bribe, recompence and reward, of a sum of money, to wit, &c. for them the said E. S. and J. C. unlawfully, unjustly, and contrary to the duty of their several and respective offices, to forbear and desist from searching the said house, in order that the said forfeited goods and merchandizes, so hidden and concealed therein as aforesaid, might not be found and seized as forfeited as aforesaid, whereby the provisions made by a certain act of parliament relative to his majesty's customs, might and would be then and\* there evaded and broken; in contempt, &c. to the evil, &c. and against the peace, &c. and also against the form of the statute, &c. By means whereof, and by force of the statute in such case made and provided, he the said C. F. hath forfeited and lost the sum of five hundred pounds of lawful money of Great Britain. And the said attorney-general, &c. that heretofore, to wit, on the said, &c. in, &c. at, &c. aforesaid, in, &c. the said E. S. and J. C. being such officers of the said customs as aforesaid, did seize and arrest as forfeited certain other goods and merchandizes, to wit, &c. [*describing the goods as before*]

which said last mentioned goods and merchandizes had become forfeited, by virtue of certain Acts of Parliament relative to his majesty's customs then and still in force ; and that they the said E. S. and J. C. so being such officers as aforesaid, did then and there detain and keep in their custody and possession the said last mentioned goods and merchandizes, in order to secure the same to and for the use of our said lord the king, and of themselves. And the said attorney-general, &c. that he the said C. F. well knowing the premises, but having no regard for the laws and statutes of this realm, nor for the penalties and forfeitures therein and thereby mentioned and provided, and unlawfully and corruptly devising, contriving, and intending to cheat and defraud our said lord the king, in his said revenue of the customs, after the said first day of, &c. which was in the said year of, &c. to wit, on the said, &c. in, &c. at, &c. aforesaid, in the said, &c. did unlawfully and corruptly give to the said E. S. and J. C. being then and there such officers of the customs as aforesaid, a bribe, recompence and reward, of a sum of money, to wit, &c. for them the said E. S. and J. C. unlawfully, unjustly and contrary to the duty of their said several and respective offices, to relinquish the possession of the said last mentioned goods and merchandizes, so that the same, although seized as aforesaid, might not be secured to and for the use of our said lord the king, and of the said E. S. and J. C. Whereby, &c. [*as before to the end. Third count, same as the last, only stating the bribe as given as follows.*] for them the said E. S. and J. C. unlawfully, unjustly and contrary to the duty of their said several and respective offices, to connive at the removal of the said last mentioned goods and merchandizes out of the presence, custody and possession of them the said E. S. and J. C. so that the same, though seized as aforesaid, might not be secured to and for the use of our said lord the king, and of the said E. S. and J. C. Whereby the provisions, &c. [*same as first count to the end.*] And the said attorney-general, &c. that heretofore, to wit, on the said, &c. in, &c. at, &c. aforesaid, in the said county of O., certain other goods and merchandizes, to wit, divers other, &c. [*as before*] which said last mentioned\* goods and merchandizes had become forfeited by virtue of certain Acts of Parliament relative to his majesty's customs, then and still in force, were found by the said E. S. and J. C. being officers of the customs of our said lord the king, and it was then and there the duty of the said E. S. and J. C. as such officers as aforesaid, to seize the said last mentioned goods and merchandizes as forfeited as aforesaid. And the said attorney-general of our said lord the king, for our said lord the king, giveth the court here further to understand and be informed, that he the said C. F. well

Third  
count.

Fourth  
count.

[\*695]

Fifth  
count.

Informa-  
tion by at-  
torney ge-  
neral, for  
offering  
bribes to  
revenue  
officers,  
on 24th  
Geo. III. c.

[\*696]

knowing the premises last aforesaid, but having no regard for the laws and statutes of this realm, nor for the penalties and forfeitures therein and thereby mentioned and provided, and unlawfully and corruptly devising, contriving and intending to cheat and defraud our said lord the king, in his said revenue of the customs, after the said first day of October, which was in the said year, &c. to wit, on the said, &c. at, &c. aforesaid, did unlawfully and corruptly give to the said E. S. and J. C. being then and there such officers of the customs as aforesaid, a bribe, recompence and reward, of a sum of money, to wit, &c. for them the said E. S. and J. C. unlawfully and unjustly, and contrary to the duty of their said several and respective offices, to forbear to seize the said last mentioned goods and merchandizes as forfeited as aforesaid. Whereby, &c. [*as before. Fifth count same as last count, only stating as in the third the bribe to be given.*] for them the said E. S. and J. C. unlawfully, unjustly, and contrary to the duty of their said several and respective offices, to connive at their the said C. F's. and J. C's. conveying and carrying away the said last mentioned goods and merchandizes, so that the same might not be seized as forfeited as aforesaid. Whereby, &c. [*as before.*]

[Commencement of information as ante 6.] That heretofore (to wit) on, &c. at, &c. W. P. and R. B. being then and there officers of the customs of our said lord the king, did in due manner take and seize as forfeited, certain goods and merchandizes, (to wit) divers, &c. which said goods and merchandizes might then and there lawfully be seized by the said W. P. and R. B. as such officers as aforesaid, and were then and there proceeding to secure the same as forfeited as aforesaid. And the said attorney-general, &c. that W. M. late of, &c. linen draper, well knowing the premises, but having no regard for the laws and statutes of this realm, nor for the penalties and forfeitures therein and thereby mentioned and provided, and unlawfully devising, contriving and intending to cheat and defraud our said lord the king in his said revenue of the customs, afterwards, and whilst the said goods and merchandizes remained in the custody and possession of the said W. P. and R. B. as such officers as aforesaid, (that is to say) on the said, &c. at,\* &c. did unlawfully and corruptly offer to the said W. P. and R. B. being then and there such officers of the customs as aforesaid, a bribe, recompence and reward, of a sum of money, (to wit) the sum of, &c. for them the said W. P. and R. B. unlawfully, unjustly, and contrary to the duty of their said several and respective offices, to quit, relinquish and give up the possession of the said, &c. so seized as aforesaid, in order that the same might not be secured as forfeited as aforesaid, whereby

our said lord the king might and would be then and there defrauded in his said revenue of the customs, in contempt of, &c. to the evil and pernicious example of, &c. and against the peace of, &c. and also against the form of the statute in such case made and provided. By reason whereof, and by force of the same statute, he the said W. M. hath forfeited and lost the sum of 50*l.* of lawful, &c.

And the said attorney-general of, &c. that heretofore (to wit) on the said, &c. in, &c. at, &c. aforesaid, in London aforesaid, the said W. P. and R. B. being then and there such officers of the customs of our said lord the king as aforesaid, did in due manner take and seize as forfeited certain other goods and merchandizes (to wit) divers other, &c. which said last mentioned, &c. might then and there lawfully be seized by the said W. P. and R. B. as such officers as aforesaid, and were then and there proceeding to secure the same as forfeited as aforesaid. And the said attorney-general of, &c. that the said W. M. well knowing the premises, but having no regard for the laws and statutes of this realm, nor for the penalties and forfeitures therein and thereby mentioned and provided, and unlawfully contriving, devising and intending to cheat and defraud our said lord the king, in his said revenue of the customs, afterwards, and whilst the said last mentioned goods and merchandizes remained in the custody and possession of the said W. P. and R. B. as such officers as aforesaid, (that is to say) on the said, &c. in, &c. at, &c. in London aforesaid, did unlawfully and corruptly offer to the said R. B. being then and there such officer of the customs as aforesaid, a bribe, recompence and reward, of a sum of money (to wit) the sum of, &c. for the use of himself the said R. B. and of the said W. P. for them then the said R. B. and W. P. unlawfully, unjustly and contrary to the duty of their said several and respective offices to quit, relinquish and give up the possession of the said last mentioned goods and merchandizes so seized as aforesaid, in order that the same might not be secured as forfeited as aforesaid, whereby our said lord the king might and would be then and there defrauded in his said revenue of the customs, in contempt, &c. [*as before. Third count like the first, only stating R. B. alone to have seized the goods, and the bribe to have been offered to him.*]

Second count.

[\*697]

[Commencement\* of information as ante 6.] That J. S. late of, &c. being a British subject, on, &c. and for a long time thence next ensuing, (to wit) until, &c. held and exercised the office of supervisor of the province of Malabar, in the East Indies, under the East India Company, and during all that time resided in the East Indies, (to wit) at, &c. and that I. A. late of, &c. being a British subject, on the said, &c. and for a long time thence next ensuing, (to wit) until,

Information against an officer for receiving presents in India, contrary to Stat. 33

Geo. III.  
c. 52. s.  
62. (1)

[\*698]

Against a  
register  
for engag-  
ing as  
proctor.

&c. held and exercised the office of commercial resident at Calicut in the East Indies, under the said united company, and during all that time resided in the East Indies, (to wit) at, &c. aforesaid. And that the said J. S. so being a British subject as aforesaid, whilst he held and exercised the said office of supervisor of the province of Malabar, in the East Indies aforesaid, under the said united company as aforesaid, and whilst he resided in the East Indies as aforesaid; and the said I. A. so being a British subject as aforesaid, whilst he held and exercised the said office of commercial resident at Calicut, in the East Indies, under the said united company as aforesaid, and whilst he resided in the East Indies as aforesaid, did, within six years before the filing of this information, (to wit) on, &c. in the East Indies aforesaid, receive of and from a certain person in the East Indies aforesaid, called the Samoory, otherwise the Zamorin Rajah, 100,000 rupees, being of the value of 12,500*l.* as a gift and present, against the form of the statute &c. whereby, and by force of the statute, they the defendants committed extortion, and, by force of the said statute, forfeited to the king the said sum of 12,500*l.*\* being the value of the said 100,000 rupees, so received by them as aforesaid, against the form, &c. and against the peace, &c.

That A. B. late of, &c. on, &c. and from thence until the day of taking of this inquisition, was, and still is register of and belonging to his majesty's high court of admiralty of England, (to wit) at, &c. and the jurors, &c. do further present, that the said Robert being such register as aforesaid, but not regarding the statute in such case made and provided, nor fearing the penalties therein contained, whilst he was such register as aforesaid, (to wit) on, &c. aforesaid, at, &c.

(1) This was the information against Stevens and Agnew, whose case is reported in 5 East, 244. The 33 Geo. III. c. 52. s. 62. on which it is framed, enacts that the demanding or receiving any money or other valuable thing, as a gift or present, or under colour thereof, whether it be for the use of the party receiving the same, or for or pretended to be for the use of the said company, or of any other person whatsoever, by any British subject holding or exercising any office or employment under his majesty or the said united company, in the East Indies, shall be deemed an extortion, or a misdemeanour at law. After verdict of guilty, a motion was made in arrest of judgment, on the ground

that there was no sufficient averment that the defendants were British subjects residing in India, and holding employments there under the crown or the East India company, at the time when the presents were received: for they are stated to have held their employments *until* the day on which the offence is alleged to have been committed. But it was holden, that as the misdemeanour was charged "whilst they held the office *as aforesaid*," the term *until* must be construed in an inclusive sense, that being the evident intent of the party framing it, and it being the object of the court, where that design is manifest, to render it effective. The proceedings were therefore supported.



acted and was concerned as a proctor in a certain cause then depending in the said high court of admiralty, that is to say, &c. contrary to the form of the statute, &c. and against the peace, &c.

## INDICTMENTS &c. FOR OFFENCES RELATING TO THE POOR AND POOR RATES.

[Commencement as ante 2.] That D. D. late of, &c. and one of the churchwardens of the said parish, and E. E. late of, &c. being evil disposed persons, and unlawfully contriving and intending to free and discharge the parishioners and inhabitants of the said parish from the expence of maintaining and providing for one A. B. the elder, and one A. B. the younger, the infant daughter of the said A. B. the elder, being respectively poor and impotent persons in the said parish of, &c. and unable to work or maintain themselves, and respectively standing in need of relief from the parishioners of the said parish, and to charge and burthen the parishioners and inhabitants of the parish of, &c. with the maintenance and support of the said A. B. the elder, and A. B. the younger, on, &c. at, &c. aforesaid, unlawfully and unjustly, and without any legal warrant or authority for so doing, carry and convey, and cause and procure to be carried and conveyed, the said A. B. the elder, and A. B. the younger, then being poor and impotent persons in the said parish of, &c. and unable to work or maintain themselves, and then respectively standing in need of relief from the said parishioners and inhabitants of the said last mentioned parish of, &c. from and out of the said parish of, &c. into the said parish of, &c. and there unlawfully and unjustly left,\* and caused to be left, the said A. B. the elder, and A. B. the younger, they the said A. B. the elder, and A. B. the younger, or either of them, not then having a legal settlement in the said last mentioned parish, which said A. B. the elder, afterwards, to wit, on, &c. at, &c. died, by reason whereof the parishioners and inhabitants of the said last mentioned parish have been obliged to expend, and have necessarily expended divers sums of money, in the whole amounting to the sum of —/ of lawful, &c. in and about the maintenance and support of the said A. B. the younger, and also in and about the burial of the said A. B. the elder, to the great damage of the said last mentioned parish and inhabitants, in contempt, &c. to the evil, &c. and against the peace, &c.

For misdemeanor, in carrying two paupers to a parish where they had no settlements, where one died. (m)

[\*699]

(m) See other precedents, 4 see post conspiracies. Wentw. 353. Cro. C. C. 394, 5.

For misde-  
meanour  
at com-  
mon law,  
in bring-  
ing a per-  
son ill  
with the  
small pox  
into a pa-  
rish,  
where she  
died. (n)

That R. H. late of, &c. devising and intending the inhabi-  
tants of the parish of C. in, &c. with the maintenance and  
support of one A. S. single woman, unjustly to charge, on,  
&c. her the said A. S. then being poor and impotent, and ill  
with the small pox, and then not having any legal settlement  
within the said parish of C. violently, unlawfully, unjustly,  
and without any legal warrant or authority, did bring, con-  
vey, and leave, and cause, and procure, to be brought, con-  
veyed and left in the said parish of C. to be kept and main-  
tained at the charge of the inhabitants of the same parish,  
which said A. S. within ten days after she was so brought  
into the said parish as aforesaid, did there die, by reason  
whereof the inhabitants of the said parish were obliged to ex-  
pend, and did expend, forty shillings of lawful, &c. in and  
about the burial of the said A. S. to the great damage of the  
said inhabitants, and to the evil example of all others in the  
like case offending, and against the peace, &c.

For bring-  
ing a poor  
woman in-  
to a parish  
where she  
had no set-  
tlement,  
and where  
she in-  
stantly  
died, so  
that the  
parishion-  
ers were  
put to ex-  
pence in  
burying  
her. (o)

[\*700]

That A. B. late of, &c. devising and intending the inhabi-  
tants of the parish of St. George the Martyr, in the said  
county of Middlesex, with the maintenance, support, and ex-  
pences of one E. C. spinster, wrongfully and unjustly to  
charge, and also intending great bodily harm to the said E.  
C. on, &c. from and out of the parish of St. Andrew, Hol-  
born, aforesaid, her the said E. C. then being poor, sick, lan-  
guid, and impotent, and unable to support, help, or maintain  
herself, and being also wholly unfit for removal, with force  
and arms, at, &c. aforesaid, unlawfully, wickedly, inhuman-  
ly, unjustly, and against the will of the said E. C. and also  
without any legal warrant or authority whatsoever, into the  
parish of St. G. the M. aforesaid, did carry and convey, and  
cause to be carried and conveyed, and then and there, to wit,  
on, &c. aforesaid, at the parish last\* aforesaid, in, &c. afore-  
said, left, and caused to be left, her, the said E. C. being so  
sick, weak, languid, impotent, and unable to support, help, or  
maintain herself, as aforesaid, to be kept, maintained, and  
supported by and at the charge and expence of the inhabi-  
tants of the said last mentioned parish, (she the said E. C. at  
the time she was so left in the said last mentioned parish as  
aforesaid, not having any legal settlement in the same;)   
which said E. C. afterwards, and as soon as she was brought  
by the said A. B. into the said last mentioned parish, as afore-  
said, did there instantly die, by reason whereof the inhabi-  
tants of the said last mentioned parish were obliged to pay  
and expend, and did pay and expend, the sum of fifty shillings,  
of lawful money of Great Britain, in and about the burial of the

(n) 4 Wentw. 353.

(o) See Gro. C. C. 7th Ed. 648.

see post conspiracies.

said E. C., to the great damage of the said inhabitants, to the evil and pernicious example, &c. and against the peace, &c.

That E. D. late of, &c. on, &c. at, &c. well knowing that one M. R. single woman, was then and there pregnant with a certain child or children, and that the said child or children would then and there be likely to be born a bastard or bastards, and devising and intending the inhabitants of the liberty above the bars, in the same parish and county, with the maintenance of one M. R. and of the said child or children with which the said M. R. was then pregnant, unjustly to charge and burthen on, &c. aforesaid, at, &c. aforesaid, to wit, in the same liberty, in the dwelling-house of her the said E. there situate, unlawfully did receive, and lodge as an inmate, the said M. R. so being pregnant as aforesaid, and also being poor and unable to maintain herself, and not having any legal settlement in the said liberty, and that she the said E. her the said M. an inmate in the same dwelling-house in the liberty aforesaid, in the same parish and county, from the said, &c. until, &c. unlawfully did continue, during which time, to wit, on, &c. the said M. R. at the liberty aforesaid, in, &c. aforesaid, did bring forth a male bastard child, and the inhabitants of the same liberty have, during the time aforesaid, been thereby compelled to expend divers sums of money, amounting in the whole to the sum of four pounds ten shillings, in relief and maintenance of the said M. R. and her bastard child, to the great damage of the inhabitants of the said liberty, to the evil example, &c. and against the peace, &c.

For a misdemeanour at common law, in lodging an inmate, who was delivered of a bastard child, which became chargeable to the liberty. (p)

That\* T. B. late of, &c. gentleman, being a person of evil name and fame, and of dishonest conversation, and being minded and desirous and wickedly devising and intending to cheat and defraud the inhabitants of the said parish of T. in the county aforesaid, of their monies, during the time when he was one of the overseers of the poor of the said parish, on, &c. at, &c. aforesaid, unlawfully, fraudulently and deceitfully, did make up, pass and deliver in, to the parishioners of the said parish, a certain false account in writing, as and for a true, perfect and just account of all and singular sum and sums of money by him the said Thomas paid and received for and on behalf of the parishioners of the said parish, during the year one thousand seven hundred

[\*701] Against an overseer for applying money received from the earnings of the poor in the workhouse to his own use, and giving in false ac-

(p) See form, Cro. C. C. 7th Ed. 650. It is no offence to keep an asylum for lying-in women, by means of which their children become chargeable to the parish. 3 Burr. 1645. But an information

lies for compelling paupers to marry. 1 Sess. Cas. 213. As to conspiracy to induce marriage, &c. to burden another parish, see post ch. conspiracy.

counts, in  
order to  
conceal  
his fraud.  
(g)

[\*702]

and seventy-nine, and one thousand seven hundred and eighty, while he was such overseer of the said parish as aforesaid, in which said account, for the year one thousand seven hundred and seventy-eight, he the said T. B. only gave credit for the sum of sixty one pounds, eleven shillings and three pence, as and for the whole amount of the earnings of the poor of the said parish, at the work-house of the said parish, in spinning mop-yarn during the said year one thousand seven hundred and seventy-eight, and in which said account, for the year one thousand seven hundred and seventy-nine, he the said Thomas only gave credit for the sum of thirty seven pounds, the same being after the rate of seventy-four pounds, as and for the whole amount of the earnings of the poor of the said parish, at the said work-house, in spinning mop-yarn during the said year one thousand seven hundred and seventy-nine, as supposed to have been received by him and one J. B. the other overseer of the poor of the said parish; whereas in truth and in fact he the said T. B. did receive for the earnings of the poor of the said parish, at the said work-house for the said year one thousand seven hundred and seventy-eight, for the use of the parishioners of the said parish, the sum of seventy-nine pounds seventeen shillings and six pence, the same being a larger sum of money by eighteen pounds six shillings and three pence, than the said sum of sixty one pounds eleven shillings and three pence, accounted for by the said T. B. in his said account for the said year one thousand seven hundred and seventy eight. And whereas in truth and in fact he the said T. B. did alone receive for the earnings of the poor of the said parish at the said work-house, for the said year one thousand seven hundred and seventy-nine, for the use of the parishioners of the said parish, the sum\* of seventy-five pounds thirteen shillings and three pence, being a larger sum of money by one pound thirteen shillings and three pence than the said sum of seventy-four pounds, accounted for and supposed to have been received by the said T. B. and the said J. B. in his the said T. B.'s account for the said year one thousand seven hundred and seventy-nine as aforesaid. By means whereof he the said T. B. did then and there (to wit) on the said, &c. at, &c. aforesaid, in the county aforesaid, obtain, acquire, and get into his hands and possession, the said several sums of eighteen

(g) This was the indictment against Brown, overseer of Twickenham, on which he was convicted. See the next precedent, which appears more modern and preferable. An indictment is sustainable for o-

verseers embezzling or rendering false accounts. Comb. 287. 5 Mod. 179. 2 Campb. 269. 1 Bott. 342. 2 Nolan. P. L. 1st Ed. 248. 2nd Ed. 371, 2.

pounds six shillings and three pence, and one pound thirteen shillings and three pence, making together the sum of nineteen pounds nineteen shillings and six pence, of the proper monies of the said parishioners of the said parish, and he the said T. B. in manner and by the means aforesaid, did then and there unlawfully, falsely, fraudulently and deceitfully, cheat and defraud the said parishioners of the said parish, of the said sum of nineteen pounds nineteen shillings and sixpence, to the great damage and impoverishment of the said parishioners of the said parish, to the manifest perversion of justice, in contempt, &c. to the evil example, &c. and against the peace, &c.

And the jurors, &c. do further present, that the said T. B. during the time when he was overseer of the poor of the said parish of Twickenham for the said year of our Lord one thousand seven hundred and seventy-eight, did receive and have, to and for the use of the said parishioners of the said parish, the sum of seventy-nine pounds seventeen shillings and sixpence, for the amount of the earnings of the poor of the said parish, at the workhouse of the said parish, in spinning mop-yarn during the said year one thousand seven hundred and seventy-eight, and for which said last mentioned sum of seventy-nine pounds seventeen shillings and sixpence, he the said T. B. according to the duty of the said office of overseer of the poor of the said parish, ought well and faithfully to have accounted; nevertheless the said T. B. well knowing the premises last mentioned, but wickedly devising and intending to cheat and defraud the said parishioners of the said parish of the sum of eighteen pounds six shillings and three pence, afterwards, to wit, on, &c. at, &c. aforesaid, unlawfully, wilfully, contemptuously, fraudulently and deceitfully, did neglect and refuse to account with the said parishioners of the said parish for the said last mentioned sum of seventy-nine pounds seventeen shillings and six pence, and instead thereof did only account with the said parishioners for the sum of sixty-one pounds eleven shillings and three pence, for the amount of the earnings of the poor of the said parish, at the said work-house, in spinning mop-yarn for the said year one thousand seven hundred and seventy-eight, as last aforesaid. By reason whereof\*, he, the said T. B. did then and there, to wit, on the said, &c. at, &c. aforesaid, unlawfully acquire and get to himself the said last mentioned sum of eighteen pounds, six shillings and three pence, of the proper monies of the said parishioners of the said parish, with intent then and there to cheat and defraud the said parishioners of the said parish of the same, and did then and there, by the means last aforesaid, unlawfully, wilfully, fraudulently and deceitfully, cheat and

Second  
count.

[\*703]

Fourth  
count.

defraud the said parishioners of the said parish of the said last mentioned sum of eighteen pounds six shillings and three pence, to the great damage, &c. (*as before.*) [*Third count, like the second, for retaining the sum of one pound thirteen shillings and three pence, in the year one thousand seven hundred and seventy-nine.*] And the jurors, &c. do further present, that the said T. B. on the said, &c. at &c. aforesaid, he the said T. B. then and there being one of the overseers of the poor of the parish aforesaid, and then and there having the custody and charge of divers sums of money of, and belonging to, the inhabitants of the parish aforesaid, then and there having the charge and keeping of accounts of certain sums of money paid and received for and on account of the inhabitants of the said parish, unlawfully, fraudulently, deceitfully and injuriously, pretend and affirm, that the money received by him the said T. B. for the work of the poor, (meaning the earnings of the poor people in the work-house of the parish aforesaid,) for the spinning of mop-yarn, in the year one thousand seven hundred and seventy-eight, amounted to the sum of sixty-one pounds eleven shillings and three pence, and no more; whereas, in truth, and in fact, he the said T. B. had received for the work of the poor, (meaning for the earnings of the poor people of the parish aforesaid,) in the work-house of the parish aforesaid, in the county aforesaid, for the spinning of mop-yarn, in the year one thousand seven hundred and seventy-eight, the sum of seventy-nine pounds seventeen shillings and six pence. And that the said T. B. on the said, &c. unlawfully, fraudulently and deceitfully, did falsely pretend and affirm that the money received by him, the said T. B. for the mop-yarn spun in the year one thousand seven hundred and seventy-nine, by the poor people in the work-house of the parish aforesaid, amounted to the sum of seventy-four pounds, and no more; whereas, in truth, and in fact, he the said T. B. had received for the spinning of mop-yarn by the poor people of the parish aforesaid, in the work-house of the parish aforesaid, the sum of seventy-five pounds thirteen shillings and three pence. And that the said T. B. afterwards, to wit, on the said, &c. unlawfully, fraudulently and deceitfully, did pretend and affirm, that he the said T. B. had received of a certain person, to the jurors aforesaid yet\* unknown, the sum of ten pounds, and no more, for a bastard, meaning for and towards the maintenance and support of a certain bastard child of the name of G. W. Whereas in truth, and in fact, he, the said T. B. had then and there, to wit, at the, &c. aforesaid, received for and towards the maintenance and support of the aforesaid bastard child, the sum of thirteen pounds; and so the jurors, &c. do say, that the said T. B. on the

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same day and year last mentioned, at, &c. aforesaid, unlawfully, unjustly, fraudulently and deceitfully, did deceive and defraud the inhabitants of the said parish of T. in the county aforesaid, of the several and respective sums of eighteen pounds, six shillings and three pence, one pound, thirteen shillings and three pence, and three pounds, in manner, &c.

That heretofore, to wit, from, &c. until, &c. J. M. late of, &c. was one of the overseers of the poor of the said parish, and that at the expiration of his said office, to wit, on, &c. or within fourteen days afterwards, it was the duty of him, the said J. M. as being such overseer, to make a just account in writing (amongst other things) of all sums of money by him received and paid for and on account of the parishioners of the said parish, during the said time for which he was such overseer as aforesaid, and to verify the same by oath, before one or more of his majesty's justices assigned, &c. ; and that he the said J. M. not regarding his duty in that behalf, but unlawfully and unjustly contriving and intending to cheat and defraud the parishioners of the said parish, of divers sums of money, which he the said J. M. as such overseer as aforesaid, had received for and on account of the parishioners of the said parish, during the time he was in his said office, on, &c. at, &c. aforesaid, unlawfully, knowingly, deceitfully and fraudulently, did make and deliver in, to the parishioners of the said parish, a certain false account in writing, as and for a true, perfect and just account, amongst other things, of all and singular sum and sums of money by him the said J. M. as such overseer as aforesaid, received and paid for and on account of the parishioners of the said parish, during the aforesaid time that he the said J. M. was in his said office, and that he the said J. M. did then and there, to wit, on, &c. aforesaid, at, &c. aforesaid, unlawfully, knowingly, deceitfully and fraudulently, neglect and omit to insert and charge himself in the said account with the several sums of money following, that is to say, the sum of twenty pounds nineteen shillings and nine pence three farthings, received by him the said J. M. of and from\* divers persons for hop-bagging, the property of the parishioners of the said parish ; the sum of three pounds eight shillings, received by him the said J. M. of and from G. W. ; and the sum of three pounds seven shillings and sixpence, received by him the said J. M. of and from one B. B. ; which said several sums of money were, during the time that he the said J. M. was in office, as such overseer as aforesaid, to wit, on, &c. at, &c. aforesaid, paid to, and received

Against an overseer for making up false accounts, and verifying them on oath.(r)

[\*705]

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(r) This was the indictment against Martin, on which he was convicted, see 2 Campb. 269. and see last precedent and notes.

Second  
count.

[\*706]

by the said J. M. as being such overseer as aforesaid, for and on account of the parishioners of the said parish. And the jurors, &c. do further present, that the said J. M. in further prosecution of his said intention to cheat and defraud the parishioners of the said parish, afterwards, to wit, on, &c. at, &c. aforesaid, did go in his own proper person before the reverend G. M. clerk, one of the justices of our said lord the king, assigned, &c. [*as ante 2nd vol. 182.*] and did then and there take his corporal oath and was sworn upon the holy Gospel of God, before the said G. M. and did then and there, upon his said oath, before the said G. M. unlawfully, knowingly, and wickedly, verify the said false account, so as aforesaid made and delivered in by him the said J. M. to the parishioners of the said parish, and by means of the premises aforesaid did then and there, unlawfully, deceitfully, and fraudulently, cheat and defraud the parishioners of the said parish, of the said several and respective sums of, &c. to the great damage, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. that the said J. M. on, &c. at, &c. aforesaid, was one of the overseers of the poor of the said parish, and as such overseer did then and there receive and take into his possession, for and on account of the parishioners of the said parish, the several sums of money following, that is to say, the sum of, &c. (stating the sums) and did keep possession thereof, for and on account of the parishioners of the said parish, from thence until, &c. to wit, at, &c. aforesaid, and that on, &c. last aforesaid, at, &c. aforesaid, the said J. M. did unlawfully, knowingly, deceitfully and fraudulently, make and deliver to the parishioners of the said parish, a certain account in writing, in which said account it was the duty of the said J. M. to have inserted the said several last mentioned sums of money, so as last aforesaid received and taken by him, and then being in his possession, for and on account of the parishioners of the said parish, and to have accounted for the same, and that the said J. M. did then and there, unlawfully, knowingly, deceitfully, and fraudulently, falsely affirm and pretend to the parishioners of the said parish (amongst other things) that the said last mentioned account was a true, perfect, and just account, of all and singular sum and sums of money, received by him as such overseer as last aforesaid, for and on\* account of the parishioners of the said parish, during the time that he the said J. M. was in his said last mentioned office; whereas in truth, and in fact, the said last mentioned account, so made and delivered by the said J. M. to the parishioners of the said parish as last aforesaid, was not a true, perfect, and just account, of all and singular sum and sums of money received by him as such overseer, as last aforesaid, for and on account of the pa-

rishioners of the said parish, during the time that he the said J. M. was in his said last mentioned office; and whereas in truth and in fact the said J. M. did not insert and charge himself in the said last mentioned account, with the said several last mentioned sums of money, or any or either of them, nor did the said J. M. then and there in any manner account with the parishioners of the said parish for the same, but his duty in that behalf did then and there, unlawfully, knowingly, deceitfully, and fraudulently, wholly neglect and omit, and the parishioners of the said parish of the said several last mentioned sums of money did then and there cheat and defraud, to the great damage, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said J. M. on the said, &c. at the said, &c. being one of the overseers of the poor of the said parish, as such overseer did then and there receive and take into his possession, for and on account of the parishioners of the said parish, the several sums of money following, that is to say, the sum of &c. and that the said J. M. on the said seventeenth day of April, in the forty-seventh year aforesaid, at the parish aforesaid, in the county aforesaid, did unlawfully, knowingly, deceitfully, and fraudulently, make and deliver to the parishioners of the said parish, a certain account in writing as and for a just account, amongst other things, of all monies received by him during the time he was such overseer as last aforesaid, for and on account of the parishioners of the said parish, in which said last mentioned account it was the duty of the said J. M. to have inserted the said several last mentioned sums of money so as last aforesaid received and taken by him, for and on account of the parishioners of the said parish, and to have accounted for the same, but the said J. M. his duty in that behalf not regarding, and contriving and intending to cheat and defraud the parishioners of the said parish of the said last mentioned sums of money, did then and there, unlawfully, knowingly, deceitfully, and fraudulently, wholly neglect and omit to insert the said last mentioned sums of money, in the said last mentioned account, or in any manner to account for the same, and thereby did then and there cheat and defraud the parishioners of the said parish of the said several last mentioned sums of money, to the great damage, &c. to the evil example, &c. and\* against the peace, &c. And the jurors, &c. do further present, that heretofore, to wit, from, &c. until, &c. the said J. M. was one of the overseers of the said parish of Wrotham, in the said county of Kent, and that at the expiration of his said last mentioned office, to wit, on the day and year last aforesaid, or within fourteen days afterwards, it was the duty of him the said J. M. as being such overseer as last afore-

Third  
count.[\*707]  
Fourth  
count.

said, to make a just account in writing (amongst other things) of all sums of money by him received and paid, for and on account of the parishioners of the said parish, during the said time for which he was such overseer as last aforesaid, and to verify the same by oath before one or more of his majesty's justices, assigned, &c. ; and that he the said J. M. his duty in that behalf not regarding, but unlawfully and unjustly contriving and intending to cheat and defraud the parishioners of the said parish of divers sums of money, on, &c. at, &c. aforesaid, unlawfully, knowingly, deceitfully and fraudulently, did make and deliver unto the parishioners of the said parish, a certain false account in writing as and for a true, perfect and just account of all and singular sum and sums of money, by him the said J. M. as such overseer as last aforesaid received and paid, for and on account of the parishioners of the said parish, during the time last aforesaid that he the said J. M. was in his said last mentioned office, and that he the said J. M. did then and there, to wit, on the same day and year last aforesaid, at the parish aforesaid, in the county aforesaid, unlawfully, knowingly, deceitfully and fraudulently, neglect and omit to insert and charge himself in the said last mentioned account with the several sums of money following, that is to say, the sum of twenty pounds received by him the said J. M. of and from one B. M. for and on account of the maintenance of a certain bastard child, born in the said parish, of which he the said B. M. was the reputed father ; the sum of one pound seven shillings and six pence, received by him, the said J. M. of and from one J. E. ; which said last mentioned several sums of money, were during the time that he the said J. M. was in office as such overseer as last aforesaid, to wit, on, &c. at, &c. aforesaid, paid by the respective persons herein before last named to, and received from them by the said J. M. as being such overseer as last aforesaid, for and on account of the parishioners of the said parish, and that he the said J. M. did then and there, to wit, on the said, &c. at, &c. aforesaid, unlawfully, knowingly, deceitfully and fraudulently, falsely insert, affirm, and charge on the said last mentioned account, that he the said J. M. had paid and given for and on account of the parishioners of the said parish, during the time he was such overseer as last aforesaid, to the persons next hereinafter\* named, several sums of money, that is to say, that he the said J. M. had paid Mr. J. (meaning T. J.) for G. (meaning I. G.) the sum of three pounds three shillings ; and that he the said J. M. had paid to Mr. C. (meaning R. C.) on account of the said parish, the sum of forty-eight pounds ; and that he the said J. M. had given G. (again meaning the said I. G.) on account of rent, the sum of three pounds ; and also that he the said J. M. had during

[\*708]

the time last aforesaid lost by casualties, monies of the said parishioners, to the amount of twelve pounds twelve shillings and six pence : whereas in truth and in fact the said J. M. had not paid to the said T. J. the said sum of three pounds ; and whereas in truth and in fact the said J. M. had not paid to the said R. C. the said sum of forty-eight pounds ; and whereas in truth and in fact the said J. M. had not given to the said I. G. the said sum of three pounds ; and whereas in truth and in fact the said J. M. had not during the time last aforesaid lost by casualties, monies of the said parishioners to the amount of twelve pounds twelve shillings and six pence. And the jurors, &c. that the said J. M. in further prosecution of his said last mentioned intention to cheat and defraud the parishioners of the said parish, afterwards, to wit, on, &c. at, &c. in the said county of Kent, did go in his own proper person before the reverend T. C. clerk, one of the justices of our said lord the king, assigned, &c. and did then and there take his corporal oath, and was sworn upon the holy Gospel of God before the said T. C., and did then and there upon his said oath before the said T. C., unlawfully, knowingly and wickedly, verify the said last mentioned false account, so as last aforesaid made and delivered by him the said J. M. to the parishioners of the said parish of W. and by means of the premises last aforesaid did then and there, unlawfully, deceitfully and fraudulently, cheat and defraud the parishioners of the said parish of W. of the said several and respective sums of twenty pounds ; one pound seven shillings and six pence ; three pounds three shillings ; forty-eight pounds ; and three pounds twelve shillings and six pence ; to the great damage, &c. of the parishioners of the parish last aforesaid, to the evil example, &c. and against the peace, &c. And the jurors &c. that the said J. M. on, &c. at the said &c. was one of the overseers of the poor of the said last mentioned parish, and as such overseer did then and there receive and take into his possession for and on account of the parishioners of the said last mentioned parish, the several sums of money following, that is to say, the sum of twenty pounds, and the sum of one pound, seven shillings, and six pence, and had the possession thereof, for and on account of the parishioners of the said last mentioned parish, from thence\* until, &c. and that on, &c. last aforesaid, at the parish last aforesaid, in the county aforesaid, the said J. M. did unlawfully, knowingly, deceitfully and fraudulently, make and deliver to the parishioners of the said last mentioned parish, a certain account in writing, in which said account it was the duty of the said J. M. to have inserted the said several last mentioned sums of money so as last aforesaid received and taken by him, and then being in his pos-

Fifth  
count.

[\*709]

Sixth  
count.

[\*710]

session, for and on account of the parishioners of the said last mentioned parish, and to have accounted for the same, and that the said J. M. did then and there, unlawfully, knowingly, deceitfully and fraudulently, falsely affirm and pretend to the parishioners of the said last mentioned parish (amongst other things) that the said last mentioned account was a true, perfect and just account of all and singular sum and sums of money received by him as such overseer as last aforesaid, for and on account of the parishioners of the said last mentioned parish, during the time that he the said J. M. was in his last mentioned office, whereas in truth and in fact the said last mentioned accounts so made, and delivered by the said J. M. to the parishioners of the said parish last aforesaid, was not a true, perfect and just account of all and singular sum and sums of money received by him as such overseer as last aforesaid, for and on account of the parishioners of the said last mentioned parish, during the time that he the said J. M. was in his said last mentioned office, and whereas in truth and in fact the said J. M. did not insert and charge himself in the said last mentioned account with the said several last mentioned sums of money, or any or either of them, nor did the said J. M. then and there, in any manner account with the parishioners of the said last mentioned parish for the same, but his duty in that behalf did then and there, unlawfully, knowingly, deceitfully and fraudulently, wholly neglect and omit, and the parishioners of the said parish last aforesaid of the several last mentioned sums of money did then and there cheat and defraud, to the great damage, &c. to the evil example, &c. against the peace, &c. And the jurors, &c. do further present, that the said J. M. heretofore, to wit, from the said, &c. until the said, &c. at the said, &c. was one of the overseers of the poor of the said parish, and that on, &c. at the parish last aforesaid, in the county aforesaid, the said J. M. did unlawfully, knowingly, deceitfully, and fraudulently, make and deliver to the parishioners of the said last mentioned parish a certain account in writing, in which account it was the duty of the said J. M. (amongst other things) to insert all sums of money which had been paid by him, for and on account of the parishioners of the said last mentioned parish, during the time he was in his said last mentioned office, and that the said J. M. unlawfully and unjustly contriving and intending to cheat and defraud the parishioners of the said last mentioned parish of the several sums of money hereinafter next mentioned, on the said, &c. in the parish last aforesaid, in the county aforesaid, unlawfully, knowingly, deceitfully, and fraudulently, did falsely insert, affirm, and charge in the said last mentioned account, that he the said J. M. had paid and



given for and on account of the parishioners of the said last mentioned parish during the time he was such overseer as last aforesaid, to the persons next hereinafter mentioned, several sums of money, that is to say, to Mr. J., (meaning the aforesaid T. J.) for G., (meaning the aforesaid I. G.'s) rent, the sum of three pounds and three shillings, and that he the said J. M. had paid to Mr. C. (meaning the said R. C.) on account of the said last mentioned parish, the sum of forty-eight pounds, and that he the said J. M. had given G. (again meaning the aforesaid I. G.) on account of rent, the sum of three pounds, and also that he the said J. M. had, during the time last aforesaid, lost by casualties monies of the said parishioners to the amount of twelve pounds, twelve shillings and sixpence, which said several sums of money make together the sum of sixty-six pounds, fifteen shillings and sixpence, whereas, in truth and in fact, the said J. M. had not paid to the said T. J. the sum of three pounds and three shillings; and whereas, in truth and in fact, the said J. M. had not paid to the said R. C. the said sum of forty-eight pounds; and whereas, in truth and in fact, the said J. M. had not given to the said I. G. the said sum of three pounds; and whereas, in truth and in fact, the said J. M. had not during the time last aforesaid lost, by casualties, monies of the said parishioners to the amount of twelve pounds, twelve shillings and sixpence; and that by means of the premises last aforesaid, the said J. M. did then and there, to wit, on the said ninth day of May, in the forty-eighth year aforesaid, at the parish last aforesaid, in the county aforesaid, unlawfully, deceitfully and fraudulently, retain, keep and acquire to himself a large sum of money, to wit, the aforesaid sum of sixty-six pounds, fifteen shillings and six pence, being a part of the monies which he the said J. M. as such overseer as last aforesaid, had received for and on account of the parishioners of the said last mentioned parish during the time he was in his said last mentioned office, and them the said parishioners thereof did then and there, unlawfully, unjustly, deceitfully and fraudulently cheat and defraud, to the great damage, &c. to the evil example, &c. and against the peace, &c.

## INDICTMENTS, &c. FOR ILLEGAL MARRIAGES, BIGAMY, &c.

That\* A. B. late of, &c. clerk, after the twenty-first day of March, in the year of our Lord one thousand seven hundred and fifty-four, to wit, on, &c. with force and arms, at, &c. did unlawfully, knowingly, wilfully and feloniously, solemnize

*Crim. Law.*

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T

[\*711]  
On 26th  
Geo. II. c.  
33. s. 8.  
For felo-

niously solemnizing matrimony without licence, &c. (s)

[\*712] Against parish clerk, under 52 Geo. III. c. 146. s. 14. for a single felony in deceiving a clergyman to make a false entry of the due publication of banns, when none had been published. (t)

matrimony between C. D. late of, &c. and one E. F., then a single woman, without publication of banns of marriage in that behalf, and without any licence of marriage in that behalf, first had or obtained from any person or persons having authority to grant the same, in contempt of our said lord the king and his laws, to the evil example, &c. against the peace, &c. and also against the form of the statute, &c.

That T. M. late of, &c. on, &c. at, &c. with force and arms; at, &c. aforesaid, did, knowingly and wilfully, unlawfully and feloniously,\* cause to be inserted in the register book of marriages, solemnized according to the rites of the united church of England and Ireland, within the said parish, a certain entry of a matter and thing relating to marriage, that is to say,

(s) See another precedent Cro. C. C. 8th Ed. 269. This indictment is founded on 26 Geo. II. c. 33. s. 8. which directs, that if any person shall solemnize matrimony in any other place than a church or public chapel, where Banns have been usually published, unless by special Licence from the Archbishop of Canterbury, or shall solemnize matrimony without publication of Banns, unless Licence of marriage be first had and obtained from some person or persons having authority to grant the same, knowingly and wilfully offending, shall be adjudged a felon, and transported for fourteen years. Under this clause, prosecutions must be commenced within three years after the offence is committed. 26th Geo. II. c. 33. s. 9.

(t) This offence appears to be indictable also under the Act the 26th Geo. II. c. 33. s. 16. by which, "knowingly and wilfully to insert, or cause to be inserted, in the registry book of any parish or chapel any false entry of any matter or thing relating to any marriage, falsely to make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or act, or assist in falsely making, altering, forging and counterfeiting any such entry in any such register—or any such licence of marriage as therein mentioned—or utter or publish as true such altered or forged register or licence—or wilfully to destroy, or cause or procure to be destroyed, any register, book of marriages, or any part of such register book, with intent

to avoid any marriage, or to subject any person to any of the penalties of that statute—is made felony without benefit of clergy.—The 52 Geo. III. c. 146. s. 14. inflicts a lighter penalty. It directs, that "if any person shall knowingly and wilfully insert, or cause or permit to be inserted in any such register book of baptisms, burials or marriages, therein described, or in any copy of any such register directed therein to be transmitted to the registrars, or in any or lists declarations, directed therein to be transmitted to the registrars, any false entry of any matter or thing relating to any baptism, burial, or marriage, or shall falsely make, alter, forge, or counterfeit, or cause or procure, or wilfully permit to be falsely made, altered, forged, or counterfeited, any part of any such register, list, or declaration, or of any such copy of any such register; or shall wilfully destroy, deface, or injure, or cause, or procure, or permit to be destroyed, defaced, or injured, any such register book, or any part thereof; or shall knowingly and wilfully sign or certify any copy of any such register, thereby required to be transmitted as therein mentioned, which shall be false in any part thereof, knowing the same to be false, he shall be adjudged a felon, and sentenced to be transported for fourteen years." The offences thus punishable were misdemeanours at common law, and subjected the party to severe imprisonment and fine. 2 Sid. 71,

that C. L. and M. K. were married on the — day of —, in the parish church of the said parish, *by banns*, and which said false entry was, and is, as follows. [*here exactly copy the entry.*] Whereas, in truth and in fact, the said C. L. and M. K. were not married *by banns*, and whereas, in truth and in fact, no banns of marriage in that behalf had been published, according to the form of the statute in such case made and provided, as he the said T. M. then and there well knew, in contempt, &c. to the evil example, &c. against the form, &c. and against the peace, &c. The second count charged him with having "*permitted*," &c. and alleged him to be the parish clerk. Another indictment, nearly similar, was drawn against the husband, who had colluded with the clerk to procure the performance of the ceremony by a false register.

That at the time of the committing of the several offences hereinafter mentioned, one C. L. being a bachelor and unmarried, was desirous of entering into the marriage state with one M. K. a maiden, and also unmarried, and that T. M. late of, &c. parish clerk of Saint Wollas in the same county, being an evil disposed and badly minded person, and contriving, devising and wickedly intending to cause and procure the said C. L. and M. K. to be united in wedlock and matrimony by unjust and unlawful means, and without the proper and necessary publication of the banns of matrimony in that behalf, did, on, &c. at, &c. aforesaid, knowingly and wilfully insert, and cause and permit to be inserted in the public register book of the marriages solemnized at the said parish of Saint W.; a certain false entry relating to the publication of the banns of the said marriage, then about to take place between the said C. L. and M. K. at the said parish, and did then and there knowingly and wilfully cause, procure and permit the date of the publication of the said banns of marriage to be falsely inserted and entered\* in the said public register, as having taken place in the lawful and necessary mode before the completion of the matrimonial ceremonies between the said C. L. and M. K.; whereas, in truth and in fact, no lawful publication whatsoever of the said banns of marriage had taken place, in contempt, &c. to the evil example, &c. against the peace, &c. and also against the form of the statute, &c. And the jurors, &c. do further present, that the said T. M. after the 31st day of December, 1812, to wit, on, &c. at, &c. aforesaid, did knowingly and wilfully cause and permit to be inserted in the said public register book of marriages, solemnized at the said parish of Saint W. in the said county of M. a certain other false entry relating to the publication of the said banns of marriage, which at the time of the committing of the said offence was about to take place at the said parish, between the said M. K. and C. L.,

Against a parish clerk, for making a false entry of the publication of banns.

[\*713]

and did then and there knowingly and wilfully cause, procure and permit the date of the publication of the said banns to be falsely made and entered in the said register, in contempt of our said, &c. to the evil example, &c. against the peace, &c. and also against the form, &c.

Information by the attorney general for a misdemeanour in procuring a marriage with a minor by false allegations. (u)

[\*714]

[Commencement of information as ante 6.] That at the time of the committing of the several offences hereinafter mentioned, one M. W. was a maiden and unmarried, and was under the age of twenty-one years, that is to say, of the age of fourteen years, or thereabouts, and was entitled unto a very considerable personal estate, of the value of one thousand pounds and upwards, and had no father living, and was under the care and custody and guardianship of S. W. of, &c. widow, her mother; and that J. T. late of, &c. being an ill-disposed person, and a person of low condition and circumstances of life, and having little or no substance or estate, well knowing all the premises aforesaid, but devising and intending to entice, inveigle, take and carry away the said M. W. from the care, custody and guardianship of the said S. W., her mother and guardian as aforesaid, and to possess himself of the person, fortune and estate of the said M. W., and to cause and procure a marriage to be in fact had and solemnized between himself the said J. T. and the said M. W. in a secret and clandestine manner, without publication or proclamation of the banns of matrimony in that behalf, and without the consent and against the will of the said S. W. her mother and guardian as aforesaid, and to deceive, defraud and\* impose upon John, by divine province, lord Archbishop of Canterbury, the Worshipful Sir William Scott, knight, doctor of laws, master or commissary of the faculties, and French Lawrence, doctor of laws, then being surrogate of the said master or commissary of the faculties, appointed to receive and take the allegations and affidavits of persons desirous of obtaining licences for the solemnization of matrimony from the said archbishop of Canterbury, under the seal of the office of faculties of the said archbishop, did, on, &c. at London, to wit, at the parish of Saint Benedict, otherwise Saint Bennet Paul's Wharf, in the ward of Castle Baynard, in London aforesaid, come in his own proper person before the said French Lawrence as such surrogate as aforesaid, and did then and there falsely, knowingly and deceitfully, make a certain allegation and affidavit in writing, to and before the said French Lawrence, purporting, and containing therein,

(u) This was the information against James Thompson, in 1799, drawn by Mr. Wood, and was obtained from the crown office. It seems doubtful whether an indict-

ment for perjury could have been supported in this case, but it seems most probable that it might. 1. Leach, 63.

among other things, that the said J. T. intended to marry with the said M. W. a spinster, aged above twenty-one years, and that he knew of no lawful impediment, by reason of any precontract, consanguinity, affinity, or any other lawful means whatsoever, to hinder the said intended marriage, and of the truth of the premises the said J. T. then and there took his corporal oath, and was sworn upon the holy gospel of God, before the said French Lawrence as such surrogate as aforesaid, and the said J. T. then and there prayed a licence to solemnize such marriage in the parish church of Saint Pancras aforesaid, and then and there in, order to obtain such licence, deceitfully, advisedly and unlawfully exhibited, and caused to be exhibited and to be filed, his said allegation and affidavit in writing, in the said office of faculties of the said archbishop, by colour and pretext of which said false allegation and affidavit by him the said J. T. in form aforesaid made and exhibited, and caused to be exhibited and filed, he the said J. T. afterwards, that is to say, on the said, &c. at, &c. aforesaid, did fraudulently, unlawfully and deceitfully, obtain and procure a certain licence and faculty, from and in the name of the aforesaid archbishop, under the seal of his office of faculties aforesaid, bearing date on, &c. for the solemnization of matrimony in the parish church of Saint Pancras, in the county of Middlesex, between the said J. T. and M. W. without the publication or proclamation of the banns of matrimony, which said licence was then and there granted and issued upon faith and credence given to the said false allegation and affidavit of the said J. T. And the said attorney general of our said lord the king, for our said lord the king giveth the court here further to understand and be informed, that the said J. T. in further prosecution of his wicked devices and intentions, aforesaid, and to complete and bring the\* same to effect, afterwards, that is to say, on, &c. at, &c. aforesaid, for the sake and lucre of the said estate and fortune of the said M. W. against the will and without the consent of the said S. W. then and there being the mother and guardian of the said M. W. as aforesaid, did wilfully, advisedly and deceitfully, inveigle, entice, allure and persuade her the said M. W. to contract matrimony with the said J. T. and thereupon then and there wickedly, unlawfully, and by sleight, did inveigle, allure, entice, take and carry away the said M. W. from and out of the custody of her said mother and guardian, with intent to marry her the said M. W. and afterwards, that is say, on, &c. last mentioned, the said J. T. did wilfully, advisedly and deceitfully, cause and procure a marriage in fact to be had and solemnized between himself and the said M. W. in the parish church of Saint Pancras, in the county of Middlesex, to wit, at, &c. aforesaid, by colour of

[\*715]

Second  
count.

[\*716]

the said licence and faculty last mentioned, without any lawful and sufficient publication or proclamation of the banns of matrimony between them the said J. T. and M. W. against the will and without the consent of the said S. W. her mother and guardian as aforesaid; and the said J. T. other wrongs to the said M. W. then and there unlawfully, wickedly and maliciously did, in contempt, &c. to the great disgrace and disparagement of her the said M. W. to the great grief and disconsolation of the friends, relations and kindred of the said M. W. to the great fraud and deceit of the said archbishop, and of the said master or commissary of the faculties, and the surrogate aforesaid, to the evil example, &c. and against the peace, &c. And the said attorney general of our said lord the king, for our said lord the king, gives the court further to understand and be informed, that at the time of the committing of the several offences hereinafter next mentioned, one other M. W. was a maiden and unmarried, and was under the age of twenty-one years, that is to say, of the age of fourteen years, or thereabouts, and was entitled unto a very considerable personal estate, of the value of one thousand pounds and upwards, and had no father living, and was under the care, custody and guardianship of one other S. W. her mother, and that the said J. T. being such person as aforesaid, and well knowing all the premises last aforesaid, but devising and intending to entice, inveigle, take and carry away the last mentioned M. W. from the care, custody and guardianship of the said last mentioned S. W. her mother and guardian as aforesaid, and to cause and procure a marriage to be had and solemnized between himself the said J. T. and the said last mentioned M. W. in a secret and clandestine manner, without publication or proclamation of the banns of matrimony in that behalf, and without the consent and against the\* will of the said last mentioned S. W. her mother and guardian as aforesaid, and to deceive, defraud and impose upon the archbishop, and the said master or commissary of the faculties, did, in order to obtain a licence for the solemnization of matrimony between himself the said J. T. and the said last mentioned M. W. without the publication or proclamation of the banns of matrimony in that behalf, on, &c. at, &c. knowingly, deceitfully and unlawfully, exhibit, and cause to be exhibited, to the said master or commissary of the faculties, in the said office of faculties, a certain allegation, in form of an affidavit, purporting and containing therein, among other things, that he the said J. T. intended to marry with the said last mentioned M. W. a spinster, aged above twenty-one years, and that he knew of no lawful impediment, by reason of any pre-contract, consanguinity, affinity, or any other lawful means whatsoever, to



hinder the said intended marriage, and the said J. T. then and there prayed a licence to solemnize such marriage in the parish church of Saint Pancras aforesaid, by colour and pretext of which said last mentioned false allegation in writing by him the said J. T. in form aforesaid made and exhibited, he the said J. T. afterwards, to wit, that is to say, on, &c. at, &c. aforesaid, did, fraudulently and unlawfully, obtain and procure a certain licence and faculty, from and in the name of the aforesaid archbishop, under the seal of his office of faculties aforesaid, for the solemnization of matrimony in the parish church of Saint Pancras, in the county of Middlesex, between the said J. T. and the said last mentioned M. W. without the publication or proclamation of the banns of matrimony, which said last mentioned licence was then and there issued and granted, upon faith and credence given to the said last mentioned allegation of the said J. T. And the said attorney general of our said lord the king, for our said lord the king, giveth the court here further to understand and be informed, that the said J. T. in further prosecution of his wicked devices and intentions last aforesaid, and to complete and bring the same to effect, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, for the sake and lucre of the said estate and fortune of the said last mentioned M. W. against the will and without the consent of the said last mentioned S. W. then and there being the mother and guardian of the said last mentioned M. W. as aforesaid, did wilfully, advisedly and deceitfully, inveigle, entice, allure and persuade her the said last mentioned M. W. to contract matrimony with the said J. T. and thereupon then and there, wickedly, unlawfully, and by sleight, did inveigle, allure, entice, take and carry away the said last mentioned M. W. from and out of the custody of her said mother and guardian, with intent to marry her the said last mentioned M. W. and afterwards, that is to say, on, &c. last mentioned, the said\* J. T. did wilfully, advisedly and deceitfully cause and procure a marriage in fact to be solemnized between himself and the said last mentioned M. W. in the parish church of Saint Pancras, in the county of Middlesex aforesaid, to wit, at, &c. aforesaid, by colour of the said licence and faculty last mentioned, without any lawful and sufficient publication or proclamation of the banns of matrimony between them the said J. T. and the last mentioned M. W. against the will and without the consent of the said last mentioned S. W. her mother and guardian as aforesaid; and the said J. T. other wrongs to the said last mentioned M. W. did then and there unlawfully, wickedly and maliciously, bring, in contempt, &c. [*conclusion as in first count.*] And the said attorney general of our said lord the Third king, for our said lord the king, gives the court here further count.

[\*717]

to understand and be informed, that at the time of the committing of the several offences hereinafter next mentioned, one other M. W. was a maiden and unmarried, and was under the age of twenty-one years, that is to say, of the age of fourteen years or thereabouts, and was entitled unto a very considerable personal estate, of the value of one thousand pounds and upwards, and had no father living, and was under the care, government and protection of one S. W. her mother, and that the said J. T. being such person as aforesaid, and well knowing all the premises last aforesaid, but devising and intending to entice, inveigle, take and carry away the said last mentioned M. W. from the care, government and protection of the said last mentioned S. W. her mother as aforesaid, and to cause and procure a marriage to be had and solemnized between himself the said J. T. and the said last mentioned M. W. in a secret and clandestine manner, without publication or proclamation of banns of matrimony in that behalf, and without the consent and against the will of the said last mentioned S. W. her mother as aforesaid, and to deceive, defraud and impose upon the said archbishop, did, in order to obtain a licence for the solemnization of matrimony between himself the said J. T. and the last mentioned M. W. without the publication or proclamation of the banns of matrimony in that behalf, on, &c. at, &c. aforesaid, knowingly, deceitfully and unlawfully exhibit, and cause to be exhibited in the said office of faculties, a certain allegation in writing in the form of an affidavit, purporting and containing therein, among other things, that he the said J. T. intended to marry with the said last mentioned M. W. a spinster, aged above twenty-one years, and that he knew of no lawful impediment, by reason of any precontract, consanguinity, affinity, or any other lawful means whatsoever, to hinder the said intended marriage, and the said J. T. then and there prayed a licence to solemnize such marriage\* in the parish church of Saint Pancras aforesaid, by colour and pretext of which said last mentioned false allegation and writing by him, the said J. T. in form aforesaid made and exhibited, he the said J. T. afterwards, that is to say, on, &c. aforesaid, did fraudulently and unlawfully obtain and procure a certain licence and faculty from and in the name of the aforesaid archbishop, under the seal of the office of faculties aforesaid, for the solemnization of matrimony in the parish church of Saint Pancras, in the county of Middlesex, between the said J. T. and the said last mentioned M. W. without the publication or proclamation of the banns of matrimony, which said last mentioned licence was then and there issued and granted upon faith and credence given to the said last mentioned false allegation of the said J. T. in contempt,

&c. to the great fraud and deceit of the said archbishop, to the evil example, &c. and against the peace, &c.

## INDICTMENTS FOR BIGAMY OR POLYGAMY.

That Elizabeth, the wife of Augustus John Hervey, late of, &c. on, &c. being then married, and then the wife of the said Augustus\* John Hervey, with force and arms, at the said parish of Saint George, Hanover Square, in the said

Against the Duchess of Kingston for bigamy. (w)  
[\*719]

(w) This indictment, on which the prisoner was convicted before the house of lords, is taken from 11 Harg. St. Tr. 100. and see other precedents, Cro. C. C. 8th Ed. 80—Starkie 412, 3.

*As to the offence.* See 1 Hale, 692, 3, 4. Hawk. b. 2. c. 42. 1 East P. C. 464 to 472, 4. Bla. Com. 163, 4. Burn J. Polygamy, Williams J. Polygamy, Dick J. Polygamy. Bigamy is the offence of having two wives living at the same time. 4 Bla. Com. 163. By 4 Edw. I. c. 5. de Bigamis it was made felony without benefit of clergy. But it was brought within clergy by 1 Edw. VI. c. 12. s. 16. At length by 1 Jac. I. c. 11. it was enacted, "that if any person within England and Wales, being married, do marry any person, the former husband or wife being alive, every such offence shall be felony, and the person offending shall suffer death as in cases of felony." These words do not, however, make the offence capital, for by 18 Eliz. c. 7. s. 2, 3. the offender, on receiving his clergy, may be burned in the hand and imprisoned for a year; by 19 Geo. III. c. 74. s. 3. a moderate fine or whipping may be substituted instead of burning; and now, by 35 Geo. III. c. 67. the same penalties are to be inflicted as in case of petit larceny. This last act enforces and does not repeal the statute of James. All the exceptions, therefore, of the older provisions still continue. These exempt from punishment those whose husband or wife shall be abroad for seven years—or being within the realm shall be absent, and the party marrying again, not

knowing the other to be alive—those who have been divorced by sentence in the ecclesiastical court, or whose first marriage has been there declared to be void—and those who were first married within the age of consent, which is fourteen in the male, and twelve in the female. It seems, from the current of authorities, that a divorce, a mensa et thoro, will set the parties at liberty. Kel. 27. 3 Inst. 89. 1 Hale, 693. Hawk. b. 2. c. 42. s. 5, acc. Cro. Car. 461. contra. And if there be a divorce a vinculo matrimonii, and one of the parties appeals, a marriage while the appeal is pending is not illegal. 3 Inst. 89, 1 Hale, 694. But in the Duchess of Kingston's case, it was decided, that a sentence in the ecclesiastical court declaring the first marriage invalid, is not conclusive in favour of the defendant, if it can be shown to have been obtained by fraud and collusion. 11 Harg. St. Tr. 200. 1 Leach, 146. And, though the parties are within the age of consent at the time of the first marriage, if they afterwards affirm the union by their consent, it will be criminal to break that contract by a second marriage. 1 Earl P. C. 468. If the first marriage was beyond sea and the second in England, the offence is indictable here, but if the second marriage was in a foreign country, no legal proceedings can be supported, for it is that which alone is criminal. 1 Hale, 692, 3. *Process*, post 4th vol.

*Indictment.* It is provided by 1 Jac. I. c. 11. s. 1. that the venue may be laid and the proceedings conducted in the county where the defendant is taken into custody. Ante 1

[\*720] county of Middlesex, feloniously\* did marry and take to husband, Evlyn Pierrepont, Duke of Kingston, (the said

vol. This has been construed to mean where he has been detained in prison. Hut. 131. And the provision is only cumulative, for it still leaves the prosecutor at liberty to try in the county where the offence is committed. 1 Hale, 694. But where advantage is taken of the exception to the general rule, that crimes are local by laying the venue in the county where the prisoner was apprehended, proof must be given of the place where the arrest was made, or the party confined, and if a warrant was issued, that instrument must be produced, or the court will have no jurisdiction to proceed. 2 Leach, 826. In such case also it is said that the indictment should aver the arrest in the county where the venue is laid. 1 East P. C. 469. But this perhaps would not now be considered as requisite, since the clause has been construed to mean the county where the defendant was imprisoned, and it sufficiently appears from the record, that he is brought to the bar in the custody of the sheriff. Starkie, 412. n. b. And there are other cases in which the jurisdiction of the court depends upon particular circumstances, where it is unnecessary to state them in the proceedings. Thus where the crown issues a commission to try all persons in custody before a particular day, it is not necessary to aver that a prisoner was taken before the time mentioned in the commission. Fost. 12. And the common commission of gaol delivery extends only to persons in actual custody, and yet it is never necessary to aver that they were in prison. 12 Mod. 449. Fost. 12. The indictment must state both marriages, and an averment must also be introduced, that the former consort was alive at the time of the second marriage. 1 East, P. C. 469. To this statement no venue need be inserted. Starkie, 62. The first marriage may be laid in the county where it actually took place, though the venue is laid in another. Starkie, 412, n. a.

*Evidence.* The first wife cannot be admitted as a witness against her husband, or vice versa, for, by the very scope of the prosecution, the first marriage was valid. Sir Tho. Raym. 1. but the second may, after the first marriage has been established, for no legal relationship exists between them. Bul. N. P. 287. 1 Hale, 693. There seems to be considerable doubt as to the proof necessary to establish the first marriage; the cases on which subject are fully collected by Mr. East. 1 East P. c. 469 to 472. From his statement of Lyon's case, M. S. it appears, that though a marriage between parties of the Roman Catholic communion be valid, if it be only proved by a witness who did not understand the Latin language, in which it was celebrated, the defendant must be acquitted. How far cohabitation and acknowledgment, though sufficient proof in petit treason of the relationship between husband and wife, will be effectual in a prosecution for bigamy, seems still uncertain. 4 Burr. 2049. 1 East, P. C. 470, 1. But even if a mere confession previous to the second marriage be not sufficiently strong, it has been holden that a document purporting to be a proceeding before a court in Scotland, on a complaint that the first marriage was clandestine, in which it is admitted by the defendant, and authenticated by his signature, will be sufficient to convict him. 1 East, P. C. 470, 1. In order to facilitate the proof of marriages in general, the 26 Geo. II. c. 33. s. 14, directs that they shall always be celebrated in the presence of two credible witnesses, besides the minister who performs the ceremony, and that immediately afterwards a register shall be made in books therein directed to be prepared, signed by the minister, the parties married, and the two witnesses present. As it is not necessary in an action for criminal conversation to call one of the subscribing witnesses, in order to substantiate the register, but the identity

Augustus John Hervey, her former husband, being then alive,) against the form of the statute, &c. and against the peace, &c. And the jurors, &c. further present, that the said Elizabeth, heretofore, to wit, on, &c. at, &c. by the name of Elizabeth Chudleigh, did marry the said Augustus John Hervey, and him the said Augustus John Hervey then and there had for her husband, and that the said Elizabeth being married, and the wife of the said Augustus John Hervey, afterwards, to wit, on, &c. with force and arms at the said parish of Saint George, Hanover\* Square, in the said county of Middlesex, feloniously did marry and take to husband the said Evelyn Pierrepont, Duke of Kingston, (the said Augustus John Hervey, her former husband, being then alive,) against the form, &c. and against the peace, &c.

Second  
count.

[\*721]

That D. G. late of, &c. on, &c. at, &c. did marry one F. C. spinster, and the said F. C. then and there had for his wife, and that the said D. G. afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, feloniously did marry and take to wife one H. M. R. widow, and to the said H. M. R. was then and there married, the said F. C. his former wife being then and there living, and in full life, against the form of the statute, &c. and against the peace, &c.

Against a  
man for  
having  
two wives  
at the  
same  
time.

Middlesex. That W. R. late of, &c. on, &c. at, &c. did marry one F. W. spinster, and her the said F. W. then and there had for his wife; and that the said W. R. afterwards, to wit, on, &c. with force and arms, at London, &c. aforesaid, feloniously did marry, and to wife did take one M. Y. spinster, and to her the said M. Y. then and there was married, the said F. W. his former wife being then alive, against the form, &c. and against the peace, &c. And the jurors, &c. do further present, that afterwards, to wit, on, &c. the said W. R. at, &c. in the county of Middlesex, was apprehended and taken for the felony aforesaid. (y)

For mar-  
rying a  
second  
wife, the  
former be-  
ing living,  
when  
the offen-  
der is  
tried in  
the coun-  
ty where  
he was ap-  
prehend-  
ed on 1  
Jac. I. c.  
11. (x)

of the parties may be proved by other means, the same rule seems equally applicable to a prosecution for bigamy when less strictness is requisite. *Bul. N. P.* 27. 4 *Burr.* 2059. 1 *East, P. C.* 472. Any evidence seems to be sufficient, which will convince the jury that an actual marriage was completed.

*Proceedings on Conviction.* By 35 *Geo. III. c.* 67. s. 3. any person sentenced to be transported, and afterwards found at large before the expiration of the sentence, may be tried either in the county where he was originally convicted, or in that

where he was taken, and in the latter case the clerk, or other person having the records of the court by which he was ordered to be transported, shall certify a transcript, briefly containing the tenor and effect of the record of the indictment, verdict, and judgment against him, which certificate being produced to the court before whom he shall stand on his trial, shall be deemed sufficient evidence of all the proceedings contained in such record.

(x) As to necessity for this averment, see ante.

(y) 2 *Starkie*, 412.

## INDICTMENTS RELATIVE TO PERSONAL PROPERTY, SLAUGHTERING HOUSES.

On 26 Geo. III. c. 71. s. 8. Against the keeper of a slaughter house, for slaughtering a horse without giving notice to the inspector of slaughter-houses.  
(z)  
[\*722]

That before the time of the committing the offences hereinafter mentioned, or any of them, to wit, on, &c. at a vestry then and there held in and for the said parish, one I. K. was in due form of law appointed inspector of the several licensed slaughter houses, and places kept or used in the said parish for the purpose of slaughtering or killing any horse, mare, &c. &c. not killed for butcher's meat. And the jurors, &c. do further present, that the said I. K. afterwards, to wit, on, &c. at, &c. in due manner took upon himself the said office, and remained and continued therein from thence,\* and until, and at, &c. after the committing of the several offences hereinafter mentioned, and still is such inspector as aforesaid. And the jurors, &c. do further present, that S. R. late of, &c. being a person keeping a place for the purpose of slaughtering and killing horses and other cattle, to wit, at, &c. and then and there using and occupying the same for the purpose aforesaid, well knowing the premises, but disregarding the statute in that case, &c. nor fearing the penalties therein contained, with force and arms, after the 20th day of July, A. D. 1786, to wit, on, &c. at, &c. to wit, in his said place, there feloniously did slaughter a certain horse for another purpose than for butcher's meat (i. e.) for sale for dog's meat, without giving any such notice as in and by a certain act of Parliament, made and passed in the parliament of our said lord the now king, in the 26th year of his reign, intituled, &c. that is to say, without giving notice to the said R. A. the inspector aforesaid, or any other such inspector appointed for the said parish, notice in writing of his intention to slaughter the same six hours previous to his slaughtering the same, contrary to the form of the statute, &c. to the evil, &c. and against the peace, &c. 2nd count, slaughtering a mare. 3rd, slaughtering a gelding. 4th, for slaying a horse. 5th, for slaying a mare. 6th, slaying a gelding.

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(z) This precedent from the MS. collection of a gentleman at the bar. By 26 Geo. III. c. 71. s. 8. the keeping any slaughter house without licence, or the slaughtering any horses, oxen, or cattle, except for

meat, without notice to the inspector therein appointed, is made felony, punishable by fine and imprisonment, whipping, or transportation for seven years.



## CHAPTER XIV.

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### INDICTMENTS FOR OFFENCES AGAINST THE PERSONS OF INDIVIDUALS.

#### HOMICIDE. (a)

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PRELIMINARY NOTES—AS TO THE OFFENCE—MODES OF  
PROSECUTION—INDICTMENT—FINDING OF GRAND  
JURY—EVIDENCE—VERDICT—SENTENCE AND  
PUNISHMENT—AIDERS AND ACCESSARIES.

Homicide\* is either justifiable, excusable, or felonious. [\*723]  
Felonious homicide is of two degrees, murder and manslaughter; of the former offence, petit treason is only an aggravated species, not differing in the circumstances which constitute the guilt, but assuming a deeper colouring, from the relation between the deceased and the criminal. It will be more convenient, therefore, first to consider murder in general, and secondly, petit treason.

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#### MURDER AT COMMON LAW, AGAINST PRINCIPALS.

*The offence.* The term *murder* or *murther* is derived by The of-  
Mr. Justice Blackstone, from the Teutonic word *Moerda*, fence:  
which originally imported a hiding or concealment, and was,

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(a) As to Homicide, in general, 3  
Inst. 47 to 57. 1 Hale, 411. to 502.  
Hawk. b. i, c. 26 to c. 33. Fost.  
255 to 337. 1 East, P. C. 214 to  
391. Com. Dig. Justices L. M. Bac.

Abr. Murder and Homicide, Burn  
J. Homicide, Williams J. Homicide,  
Dick J. Homicide, Cro. C. C. 285 to  
300. 4 Bla. Com. 176. to 204.

[\*724] therefore, anciently\* used only for the secret killing of another by the hands of an assassin. 4. Bla. Com. 194, 5. But it seems to be more correctly traced to the Saxon term *Morth*, synonymous with *Mors*, to which the barbarous Latin term *Murdrum*, and the French *Meudre*, owe their origin. Jac. Dic. Murder. The offence, as it stands at the present day, is concisely defined by Lord Coke to be, "When a man of sound memory, and of the age of discretion, killeth any reasonable creature in rerum natura, and under the king's peace, by malice prepense, or aforethought, either expressed by the party, or implied by law." 3 Inst. 47, 51. 1 East, P. C. 214. To constitute murder, then, these circumstances must concur—the agent must be of sound memory and discretion—there must be an unlawful killing—the sufferer must be a reasonable creature, under the king's peace, and alive—and there must be malice, either express or implied in the slayer, which parts of the definition of the crime we will now proceed distinctly to consider.

1. *The agent must be of sound memory and discretion.*—But this is no other than is necessary to constitute any indictable offence. An *infant* within the age of discretion is incapable of crime. Hawk. b. 1. c. 1. s. 1. But what age shall be regarded as sufficient to render a child responsible to the law is not ascertained with so direct a precision. Under the age of seven years, indeed, it seems that no circumstance of mischievous discretion can be admitted to overthrow the strong presumption of innocence which is raised by an age so tender. 1 Hale 27, 8. 4 Bla. C. 23. During the interval between seven and fourteen, the infant is, *prima facie*, supposed to be destitute of criminal design; but this presumption diminishes as the age increases, and even during this interval of youth may be repelled by positive evidence of vicious intention, 1 Hale 27. 4 Bla. C. 23. For a tenderness of years will not excuse a maturity in crime; and the maxim, in these cases, *malitia supplet ætatem*, is allowed to prevail; since the power of contracting guilt is measured rather by the strength of the delinquent's understanding, than by the days and years. 4 Bla. Com. 23. Thus children of thirteen, eight, and ten years of age, have been executed for capital offences, because they respectively manifested a consciousness of guilt, and a mischievous discretion or cunning. 1 Hale 25. note 26, 7. Foster 72. and see Dalt. Just. ch. 147. After the age of fourteen, an infant is on the same footing with those of the maturest years. 1 Hale 25. In these cases, however, the evidence that the offender was *doli capax* must be strong and clear, beyond all doubt and contradiction. 4 Bla. Comm. 24. *Madness* is another cause which may render a man incapable

[\*725] of\* crime, and where it amounts to a total perversion or ab-

sence of the intellectual faculties, is an excuse for any enormity which may be committed under its influence, 3 Inst. 6. But where there is only such a partial derangement as leaves the party free to act or to forbear in the particular case in question, or where he is guilty of the crime during a lucid interval, he will be equally liable to punishment with those who are perfectly sane. See Earl Ferrer's case, 10 Harg. St. Tr. 478. Where, however, the mind labours under such a delusion, that though it discerns some objects clearly, it is totally deranged as to the objects of its attack, the party will be entitled to an acquittal. See this point and indeed the whole subject most ably argued and explained by Mr. Erskine, and acceded to by the court in Hadley's case, 5. vol. of Erskine's Spee. 1. Ridgway's ed. 1812. The temporary absence of reason produced by drunkenness is not, in any case, a legal excuse for the acts which it may occasion or excite, but as Lord Coke observes, "a drunkard, who is *voluntarius dæmon*, hath no privilege thereby, but what hurt or ill soever he doth, his drunkenness doth aggravate it: nam omne crimen ebrietas et incendit et detegit." Co. Lit. 247. Plowd. 19.

2. To constitute murder, there must *be an actual killing*. But it is not necessary that death should be caused by direct violence: it is sufficient if the act done apparently endangers life, and eventually proves fatal. Hawk. b. 1. c. 31. s. 4. And, therefore, where a son carried his sick father, against his will, in a cold and inclement season, from one town to another, in consequence of which he died, where a woman left a newborn child in an orchard, covered only with leaves, in which situation it was killed by a kite, and where parish officers removed a child from parish to parish, till it perished for want of care and sustenance, they were adjudged guilty of murder. 1 Hale 431, 2. Palm. 545. So if a prisoner die by the cruelty or neglect of the gaoler, or, in legal language, "by duress of imprisonment," the party actually offending is criminal in this degree, Fost. 321. So that where the keeper of a place of confinement obliged a party in his custody to lodge in a room with another infected with the small pox, by which means he took it and died, it was holden to be wilful murder. 2 Stra. 856. Fost. 322. And, where another person in the same office confined his prisoner in a low, damp, and unwholesome room, without any of the common necessities of decency and health, so that he contracted distempers which proved ultimately fatal, the court came to a similar decision. 2 Ld. Raym. 1578, Fost. 322. And if a master neglect to furnish his apprentice with sufficient food, or neglect him, when ill, so that he dies, he will be guilty of murder. 1 Leach\* 137. 2 Campb. 650. The laying noisome and poisonous filth at a man's door, which kills him by corrupting the air which he

breathes, amounts also to the same offence; 1 Hale 432. And it has been said, that if the owner of a dangerous animal let it loose on purpose that it may do mischief, and it kills some one while at large, he is guilty of wilful murder; 4 Bla. Com. 197. 3 East, 595, 6. Hawk. b. 1. ch. 31. though it has been objected that this opinion does not rest on any certain foundations, 1 Hale, 431. So if a man, knowing himself to be infected with a dangerous distemper, maliciously puts himself in the way of others, that they may take the infection, which terminates in their death, it has been doubted to what extent he is legally guilty. 1 Hale, 431. It seems also to have been made a question whether taking away a man's life under colour of the law, by falsely accusing him of a capital offence, and supporting the charge by perjury, is not wilful murder; but the better opinion seems to be in the negative, not because the moral guilt of such a mode of destruction is less than that of assassination itself, but because the law is unwilling to terrify its own witnesses by imposing on them a responsibility so awful. Fost. 131. 3 Inst. 48. 4 Bla. Com. 197, n. 4. Christian's Ed. If a physician or surgeon give a medicine to a patient, with intent to cure him of any disorder under which he labours, which kills him, he will not be guilty of any criminal homicide. 1 Hale, 429. And though it has been said that persons not regularly practising the art of physic will be chargeable with man slaughter, if they kill under pretence of curing, the notion is justly questioned, and is most probably erroneous, 1 Hale, 429. 4 Bla. Com. 197. Hawk. b. 1. ch. 32, s. 62. Nor is it murder to work on the imagination so that death ensues, or to call the feelings into so strong an exercise as to produce a fatal malady, though such acts, if not malicious, spring from a criminal thoughtlessness, 1 Hale, 429. 4 Bla. C. 204. n. 5. Christian's Ed. And in no case can a man be adjudged guilty of homicide, unless the death takes place within a year and a day after the injury to which it is ascribed; which computation is made inclusive of the day on which the wrong was committed, 4 Bla. Com. 197. And if the wound itself be not mortal, but by improper applications becomes so, and terminates fatally, and it can be clearly shewn that the medicine and not the wound was the cause of the death, the party who inflicted the latter will not be criminal, 1 Hale, 428. But where the wound was adequate to produce death, it will be no excuse to shew that, had proper care been taken, a recovery might have been effected, 1 Hale, 428.

[\*727] 5. *The party killed must be a reasonable being, alive, and in the\* king's peace.*—And therefore, to take a potion in order to produce abortion, or to administer it to a pregnant female with the same design, or to strike her so that the child is

killed, is not murder, at common law, because it is not *in rerum natura*, and the circumstance of its death cannot be ascertained with sufficient precision; though there seems to be some doubt whether, if the child be born alive, and afterwards die by reason of the violence it has received before its birth, it will be murder in the party who inflicted it. Hawk. b. 1. c. 31. s. 17, 18. 1 Hale 433. 3 Inst. 50. Bac. Abr. Murder and Homicide B. It is, however, certain, that if a man persuade a woman who is with child to destroy her offspring on its birth, and she follows his advice, he is an accessory to murder, though the object of his malice was not in being at the time he contrived its destruction. 1 Hale 433. And now by 43 G. III. c. 58. s. 1. it is a capital offence, wilfully, maliciously and unlawfully, to cause a woman to take any deadly poison, or other noxious and destructive substance or thing, with intent to procure miscarriage, she then being quick with child. By the words, "under the king's peace," all persons, except an alien enemy in the actual heat of war, seem to be included. And to kill even an alien enemy, except in battle, is murder, 1 Hale, 433. And to slay an attainted criminal, without warrant, is also murder, and his wife may support an appeal, 1 Hale, 433. So, though a savage idea once prevailed, that a party outlawed of felony was "*caput lupinum*," whom any one might destroy, it is now certain that such an officious interference is punishable capitally. Co. Lit. 128. b. 4. Bla. Com. 320, 197. So it is murder to shoot a person committing a misdemeanour, though he could not otherwise have been taken, 4 Bla. C. 201. n. 5. Christian's Ed.

4. *There must be malice either express or implied.* It is this circumstance which distinguishes murder from every other description of homicide, especially from manslaughter, which comes nearest to it both in guilt and punishment. It is, therefore, of great importance to ascertain in what this malice consists, which is by no means so simple an enquiry, as, at first sight, it might appear. For the legal sense of this term is not confined to a particular animosity to the deceased, but extends to an evil design in general, a wicked and corrupt motive, an intention to do evil, the event of which is fatal. Fost. 256. 4 Bla. Com. 198, 199, 200. 1 East, P. C. 215. See the legal signification of the term "malice" explained, Gilb. C. L. and E. 190 to 195. This malice, which is proved by external circumstances only, (Hale, P. C. 451.) is either *express* or *implied*. The plainest cases of the *former* are when a deliberate intention is evinced to kill a particular individual; which may be shewn by former animosities, concerted plots, or the nature of the act\*itself. 4 Bla. Com. 199. Within this class of cases, mo- [\*728]

der duelling falls; where each party comes with a deliberate intention to take away the life of another, or to lose his own, though frequently no actual desire of revenge exists, but merely a deference to the prejudices of the higher orders of society. Nor, where the conflict is deliberate, is it of any consequence what were the merits of the original quarrel, how great the provocation might have been, or by which party the challenge was sent; for the subsequent deliberation renders all these circumstances immaterial. 3 Bulstr. 171.

(b) And the second of the party killing is equally implicated with his principal. 3 East, 581. And some have supposed also the second of the deceased, since the fighting was upon a compact; though Lord Hale justly thinks this opinion too severe. 1 Hale, 443. 1 East, P. C. 242. 4 Bla. Com. 199. See the law of duelling fully stated, 3 East, 581. But, in a variety of other cases, the *implication of malice* supplies the place of express evidence. The chief of these are, when an officer of justice is killed in the discharge of his duty, or a private person lawfully interfering to prevent crimes,—where death happens in the prosecution of some unlawful design,—and when, in heat of blood, such violence is used as the circumstances will not mitigate into a simple felonious homicide.

*Officers of justice* are under the special protection of the law; Fost. 308. And this not only while in the immediate discharge of their duty, but in going and returning; so that if one of them be killed in proceeding to perform his duty, in its actual exercise, or immediately afterwards, it will be murder in all concerned, and the law will presume malice in the highest degree. Fost. 308-9; and this privilege extends not only to officers, but all legally assisting them, and to private individuals, whenever they are enjoined to interfere. *id. ibid.* The extent of this protection will be found fully considered in the second chapter of the first volume, in the consideration of what may properly be done in order to arrest the offender. The only difficulty on this part of the subject is, how far a defect in the process attempted to be executed will mitigate the guilt of those who resist it. This

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(b) The language of Lord Coke and Mr. Justice Croker, in passing sentence, in this case, on the defendant, who was the party challenged, little accords with the feelings of all parties, at the present day, on the subject of duels. They seem to exhaust every phrase of abhorrence afforded by the English tongue, and then resort to the Latin "O quid

fecisti? *Infelix victoria*, where more damage doth come to him which doth overcome than to him that is vanquished: his punishment is secret *inter pontem et fontem*, he may find mercy; but as to the murderer, *quid fecisti* for him? The civil sword of justice now hangs shaking over your head; *Judicia Dei sæpe sera sunt certa*," &c.



point will be found so amply discussed\* in Foster, 310 to 322. and 1 East, P. C. 309 to 335. that any other consideration of it here is rendered needless. See also, ante 1 vol. 44. [\*729]

When death ensues in the pursuit of an unlawful design, without any intention to kill, it will be either murder or manslaughter, as the intended offence is felony or only a misdemeanour. Fost. 258. Thus if a man shoot at the poultry of another with intent merely to kill them, which is only a trespass, and slay a man by accident, it will be manslaughter; but if he intended to steal them when dead, which is felony, he will be guilty of murder. Kel. 117. Fost. 258. So where the party shoots at one man and kills another, malice will be implied as to the latter; and the felonious intent is transferred, on the same ground, where poison is laid to destroy one person and is taken by another. 1 Hale, 466. If a medicine be given to a female to procure abortion, which kills her, the party administering it will be guilty of her murder, 1 Hale, 429. The same rule also applies to all confederacies to do unlawful acts, or to resist the course of justice; for all who unite in such design, if death ensue in the execution of it, will be murderers, 1 Hale, 442-5. But the killing must be in prosecution of the original intent, and not merely collateral to it; so that if several persons are engaged in a smuggling transaction, and on being opposed by the king's officers, one of them fires and kills an accomplice, it will be left to the jury to say whether the firing was in furtherance of the smuggling, or proceeded from some individual malice against the deceased, and on this point the guilt or innocence of the rest will depend. Kel. 109. Where in the course of an attempt by persons armed to remove goods about to be taken as a distress, one of the party engaged in it, unknown, killed a boy who was standing near, but who could not have been an object of general vengeance, the majority of the judges held that the affrayers at large were not implicated in murder, though Holt and Pollexsen thought otherwise, and there can be no doubt, if it had been shewn that the blow was intended for some of those with whom the contest was continued, that all would have been equally guilty. 1 East, P. C. 258. 1 Leach, 6. But all the parties charged with murder must be either actually engaged in the unlawful pursuit at the time, or must have been so recently that no fresh provocation can reasonably be supposed to have arisen. 1 Hale, 440,-4,-5. If a woman, in consequence of being ravished, die, the offender may be indicted for murder. 1 Leach, 96. Where, however, the act done is not malum in se, but prohibited, except to persons of a certain description, as shooting at game, an unqualified person will not be more guilty, if, in shooting, he kills a human being, than one who is legally authorized\* to [\*730]

sport ; in both, the misfortune will be regarded as purely accidental. 1 Hale, 475. Fost. 259.

X Very great niceties will be found to have arisen in drawing the line between murder and manslaughter, in cases of sudden quarrel. But here it must be observed that every homicide is, *prima facie*, murder, and it will be considered as such until justified or excused ; and, therefore, when this fact is once established, it rests on the defendant to make out that he is justified, excused, or his guilt reduced to manslaughter, by some adequate provocation. For all killing is taken to be both felonious and malicious, until the contrary is shewn in evidence. Fost. 255. 4 Bla. Com. 201. But where death ensues evidently from heat of blood, on some grievous provocation, the law, indulgent to the weakness and infirmity of our nature, reduces the offence to manslaughter.

X The great distinction seems to arise from the enquiry whether the force or weapon used by the prisoner was likely to produce death. Thus, where a park-keeper, finding a boy stealing wood in his master's ground, bound him to a horse's tail and beat him, on which the horse took fright and dragged him on the ground till he died. 1 Hale, 454—where a tutor stamped on the breast of his scholar, 4 Bla. Com. 199—where a master struck his servant with an iron bar, Kel. 64, 5.—they were respectively holden to be murderers. But where the instrument seemed proper for correction, or for punishing a violent insult, as where a father for some heavy offence beat his son with a rope, in consequence of which he died, 1 East, P. C. 261. ; where a man found a trespasser on his ground, and beat him till he unluckily killed him, Fost. 291. and where a shepherd, being angry with his boy, threw a stake at him which lay near him on the ground, and killed him, 1 Leach, 378. in notis, it was holden to be manslaughter only. And this is the ground, according to Foster, on which Rowley's case must have been decided, where a father, seeing his son return, covered with blood, from having been beaten by another boy, took a staff, ran three quarters of a mile, and beat his son's adversary with it so severely as to occasion his death ; for this could never have been palliated on such a slight provocation, unless the instrument had been, as stated in some of the reports, merely a small wand or cudgel. Fost. 294, 5. Ld. Raym. 1498. It seems also, that where a woman threw a stool at her daughter in law, on some ground of irritation, and killed her, she was only guilty in this degree. 1 Leach. 368. Homicide is also often thus extenuated by the circumstance of a mutual contest arising from the spur of the occasion, where no undue advantage is either sought or taken by either of the parties. See 5 Burr. 2793. and cases cited 1 East,

P. C. 241 to 246. And in this case, it is of no consequence\* from whom the first provocation arises. 1 Hale, 456. But if one with his sword drawn makes a pass at another whose sword is undrawn, and a combat ensues, if the former be killed, it will only be manslaughter in the latter, but if the latter fall, it will be murder in the former, for by making the pass before his adversary's sword was drawn, he evinced an intention not to fight with, but to destroy him. Kel. 61. Hawk. c. 31. s. 33, 4. (c) And where a man upon occasion of some angry words threw a bottle at the head of his opponent and immediately drew, and when his adversary returned the bottle, stabbed him; this was holden to be murder in him, because he drew previous to the first aggression. Kel. 119. 2 Ld. Raym. 1489. So if two bailiffs arrest a man, and he abuse and threaten and strike them, and bring pistols, declaring that he will not be forced from his house, and on high words arising between them, and on the bailiffs being struck and provoked, they fall on him and kill him, they will be guilty of manslaughter only. 6 Harg. St. Tr. 195. Fost. 292, 3, 4. And where, on an affray in a street, a soldier ran to the combatants, and in his way a woman struck him in the face with an iron patten, and drew a great deal of blood, on which he struck her on the breast with the pommel of his sword; and on her running away immediately followed and stabbed her in the back; he was holden to be guilty simply of felonious homicide. Fost. 292. see 5 Burr. 2794. On a quarrel between a party of keel-men and soldiers, one of the latter drew his sword to protect himself and his comrades from the assaults of the mob, and killed a person dressed like one of the former, whom he mistook for one of the keel-men; and this was held to be no more than manslaughter. Brown's case, 1 Leach, 148. And where, after mutual provocation, the deceased and his opponent struggled, and in the course of the contest the former received his mortal wounds from a knife which the latter had previously in his hand in use, though the jury found the prisoner guilty of murder, the judges held the conviction wrong, and recommended him for a pardon. 1 Leach, 151. But in no case will previous provocation avail, if it was sought for by the act of the slayer, to afford him a pretence for gratifying his own malice. Nor will it alter the case, that blows had previously been given, if they evidently left traces of a deadly revenge, which seeks an opportunity of indulging itself by provoking a second contest, to cover and excuse a deliberate attempt on the life of its object. 1 East, P. C. 239, 240. [\*731]

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(c) This is, of course, at common law. For the alterations made by the statute of stabbing, see post.

[\*732] There are some cases in which, though no actual violence be offered\*, the law allows an excuse for the feelings excited by an atrocious injury. Thus if a man find another in the act of adultery with his wife, and kills him in the first transport of passion, he will be guilty of manslaughter only; but if, after time for reflexion, he returns and takes his revenge, the law will regard it as murder. For no man in a civilized state has a right to visit personal injuries with vengeance; he is bound to appeal to the laws for redress; and it is on this subjugation of the natural passions to the general good, that society itself depends. Fost. 296. Whether a woman, who suddenly stabs a peace officer attempting to arrest the man with whom she cohabits on an illegal warrant, is guilty of murder or manslaughter, is still doubtful; though if she had been his lawful wife, her offence would probably be softened to the latter description. 1 Leach 206.

X On the whole, then, though the application of the rule may be attended with some difficulty, we may conclude, that if the provocation be light—if the resentment be inadequate to its cause—if dangerous instruments be used under pretence of correction, even where correction is lawful,—or be the provocation what it might, if time for reflection intervened—if previous malice can be shewn—if there be traces of deadly animosity, from whatever cause—the offence of homicide is *murder*; but, if the cause be but sudden passion overstepping its bounds, correction well intended though too severe, a sudden fury, blind, though fatal, the law reduces the crime to *manslaughter*.

Modes of prosecution.

*Modes of Prosecution.* A party guilty of homicide may be proceeded against on the *inquisition of the coroner*, by *appeal* or by *indictment*, of which the last is by far the most usual, as well as the most constitutional, mode of prosecution. As to the duties and powers of the coroner in relation to violent deaths, the reader may consult Com. Dig. Coroner, Bac. Abr. Coroners, Impey's Office of Coroner, and Burn's, Williams's, and Dickinson's Justice, under that title. If, after the inquisition, an indictment be found for the same offence, and the defendant be acquitted on the one, he must be arraigned on the other, though he will be immediately discharged on pleading his former acquittal. 2 Hale, 61. 1 Salk. 382. But it is now the practice to try him upon both proceedings at the same time, by which means, if he is proved innocent, a second trial is avoided. 1 Salk. 382. The mode of prosecuting an appeal has long been an object rather of curiosity than of use, though it was greatly favoured in ancient times. Those who are desirous of investigating this subject, which is connected with many interesting features in the early history of our legislation, will find it amply discuss-

ed in Hawkins, b. 2. c. 23. and 2 Institutes, 314 to 321. 5 Burr.\* 2793. but as it is of no practical utility at the present day, it will not require discussion here. We shall therefore confine our attention to the indictment. This, it seems better, if there is any doubt as to the degree of the offence, to frame for wilful murder, because the charge may afterwards be modified according to the evidence. And the defendant committed on such a charge may be brought up by habeas corpus, when, if it appears from the depositions that the homicide was either justifiable or excusable, he may be admitted to bail; though this is a responsibility which justices of the peace ought not to incur. 1 East, P. C. 340. So that he can sustain no great inconvenience from the charge being thus framed, and he has this advantage, that an acquittal of murder will bar any subsequent prosecution for manslaughter, because, on the trial, had the latter appeared in evidence, the jury might have found him guilty in this degree, 4 Cro. Rep. 45, 6. 2 Hale, 246. Fost. 329. and see post. 739, as to the verdict in murder. [\*733]

*The Venue.* By the common law, if a mortal wound was given in one county, and the party died in another, the offender could not be indicted in either; for a jury of the last could not enquire of the wounding in the first, nor could the grand inquest of the former take cognizance of the death in the latter. Hawk. b. 2. c. 25. s. 36. and see 1 vol. 178, 9, &c. But by 2 and 3 Edw. 6. c. 24. the venue is to be laid in the county where the party dies. And as the same difficulty existed in the case of accessaries, who planned a murder in one jurisdiction which was perpetrated in another, the 43 Geo. III. c. 113. s. 5. allows the prosecutor to indict them in which of the two he pleases. If the stroke be in England, and the death in Wales, the indictment should be in the latter, and vice versa. 1 East, P. C. 363, 4, 5. 1 Vol. 185. As to the rules which regulate the venue when the offence is on the high seas or beyond the seas, or partly on the sea and partly on land, see 1 Vol. 186 to 189. The indictment.

*Description of the deceased, &c.*—If the name of the party deceased be known, it should be stated; ante 1 vol. 212, 3. but there is no occasion to state the addition, although, for the sake of distinction, it may sometimes be proper. 2 Hale, 182. And if the name of the person killed cannot be ascertained, an indictment for the murder “of a certain person to the jurors unknown” will be valid. 2 Hale, 181. It is usual, but not necessary, to state the deceased as “in the peace of God and our lord the king then and there being,” but this is not requisite, and, in cases where he was breaking the peace at the time, would be improper. 2 Hale, 186 Hawk. b. 2. c. 25. s. 73. post 751. n. (m.) The terms “with

[\*734] force and arms" are said to\* be unnecessary, being so fully implied in the description of the violence employed, Hawk. b. 2. c. 23. s. 85.

*Description of the offence.*—The indictment must set forth the means by which the death was effected, and a mere statement that the defendant killed will not suffice. Hawk. b. 2. c. 23. s. 84. An allegation of one kind of death will not be supported by evidence of another essentially different, so that if it be alleged that the murder was committed by stabbing, and it be shewn to have been by drowning or poisoning, the prisoner must be acquitted. *id. ibid.* 2 Hale, 185. So where the manner of the death is doubtful, it may be laid differently in different counts, so as to meet the evidence. 2. Leach, 569. But if the particular species of weapon be stated, it will be no variance to prove that another was used, so that an indictment for assaulting with a staff is supported by evidence that the violence was offered by a stone. 1 East, P. C. 341. And an indictment for murder, occasioned by one description of poison, will be supported in evidence by proof of murder by a poison of another description. 3 Campb. 75. It is usual, where the death was occasioned by a blow from some instrument, to state, that the defendant held it in his right or left hand, or in both his hands; and this is said to be essential. 2 Hale, 185. though Mr. East says he finds no ground for this particularity. 1 East, P. C. 341. The price of the instrument is also usually stated, or else it is averred that it is of no value, because it is forfeited as a deodand to the crown; but this does not appear to be absolutely requisite. 2 Hale, 185. Where the death is occasioned by actual violence, the term *struck*, (formerly *percussit*) should always be inserted; for though some doubts have been entertained whether it is absolutely necessary, it would be very unsafe to omit it. Cro. Jac. 635. 1 Bulst. 184. 5 Co. 122. 2 Hale, 184, 6, 7. Hawk. b. 2. c. 23. s. 82. Formerly it was said that the indictment should state *percussit dans*, and not *percussit et dedit*, the blow, because the former is not so certain, and another stroke might be intended. 1 Ld. Raym. 145. When the death is occasioned by a wound, it should be stated to have been *mortal*, nor will the want of this term be supplied by the allegation that the deceased died in consequence of the injuries he received. 1 Leach, 96. Kel. 125. 2 Hale, 186. Regularly also the length and depth of the wound should be shewn, that it may appear to have been an adequate cause of death; but this is not necessary, where a man is shot or run through the body with a bullet or sword, but it will then suffice to say, that the defendant struck the person killed in a certain part of the body, and gave him there a mortal wound

[\*735] penetrating in and through the body, because\* this is evi-



dently of such a depth as to prove fatal. 5 Co. 121, 2. Hawk. b. 2. c. 23. s. 81. acc. 1 Ld. Raym. 145. cont. And where a limb is cut off, it is impossible thus to describe the injury, and therefore in such a case it cannot be requisite. id. ibid. The precision required where death arises from a blow or wound, is equally necessary when it was effected by any other means. And therefore where it was alleged that the defendant persuaded the deceased to take a poisonous mixture under pretence that it was medicine, and that he "*nesciens prædictum potum cum veneno fore intoxicatum, sed fidem adhibens dictæ persuasioni dicti C. D. recepit et bibit,*" the proceedings were holden insufficient, because it is not expressly stated that he received and drank the poison: nor was the defect cured by the words immediately following,—"*per quod idem A. B. immediate post receptionem prædicti veneni per tres horas immediate sequentes languebat et obiit,*" though no stronger implication could have arisen. 4 Co. 44. But the means of death must be stated clearly and positively, and then if the death was caused by a stroke, the indictment should proceed to aver that the offender thereby gave to the deceased a mortal wound or bruise, of which he died; or where by poison, after stating how it was administered, that the party died of the poison so taken, and the sickness that arose from its operation. 1 East, P. C. 343. And therefore, where an infant died in consequence of the violence with which a rape was committed upon her, the indictment for murder was held bad, because it did not state that a mortal wound was given. 1 Leach, 96. It seems to have been supposed that this case affects the position first stated, that there are instances in which the extent of the wound need not be shewn; but those rest on the principle that the indictment shews, with sufficient clearness, that the injury was capable of producing death, and here nothing of the kind could be presumed from the facts stated on the record. For the same reason, where death is caused by a wound or stroke, it is necessary to set forth the part of the body to which the violence was applied, and therefore, if the indictment merely stated the wound to be near or about the breast, it would be defective. 4 Co. 40. b. And it is even said that if the wound were on the arm, leg, or side, it must be shewn whether it was on the right or the left, or the description will be too uncertain. Hawk. b. 2. c. 23. s. 80. 1 East, P. C. 342. though this may be doubted, because it would be equally mortal on either; nor will an uncertainty in this respect be aided by describing other wounds with sufficient precision, if there be a general conclusion that the death was by reason of them all; for it might have arisen chiefly from that which is imperfectly described. Hawk. b. 2. c. 23. s. 80. But it is sufficient to\*

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state the wound to have been given in the breast, the neck, the stomach, or even the body. 4 Co. 41. Cro. Jac. 95. 5 Co. 121. Hawk. b. 2. c. 23. s. 80. And if a more uncertain or unintelligible description be added, it may be rejected as surplusage. 4 Co. 41. Hawk. b. 2. c. 23. s. 80.

It is absolutely necessary to state that the party murdered died of the injury that he received; and therefore it was held that an indictment setting forth the means of strangling, and then averring *qua suffocatione obiit*, instead of *de qua suffocatione*, was erroneous. 1 Rol. Rep. 137. where the death was caused by several poisons, bruises, and wounds, it may either be stated that the death arose from them all, or that the deceased died of the first, and would otherwise have died of the second, and that in case he had survived these, the third would have been fatal. Hawk. b. 2. c. 23. s. 83. Where the indictment is for the murder of an officer, or in any case where the circumstances are complicated, it will be unnecessary to set out any of the details; but the requisites here stated will suffice. Cro. Jac. 280. If more of the special circumstances in evidence of malice, &c. be stated than is necessary, the prosecutor will not be compelled to prove them, but they may be rejected as surplusage. 9 Co. 62.

The *time* both of the stroke and death should be stated on the record, the former, because the escheat and forfeiture of lands relate to it, the latter, in order that it may appear that the death took place within a year and a day after the mortal injury was received. 2 Hale, 179. Cro. Eliz. 739. 2 Inst. 318. 1 vol. 222. This may be done by stating, according to the fact, either that he died instantly of the wound, or that he languished to a day specified, and then died. 1 East, P. C. 344. If either fact occurred in the night, it should be so stated, though this would not be material in an indictment, whatever it might in an appeal. It is not sufficient to lay the offence between two specified days, or about a certain day, or on a Saint's day, of which there are two of the same name, without an addition to distinguish them. Hawk. b. 2. c. 23. s. 8. An impossible day, as the thirty-first day of June, will vitiate, and leave the proceedings as if no time had been stated. Moor, 555. When the indictment states that the prisoner on a certain day assaulted the deceased, it will not be sufficient to proceed with averring that he feloniously struck him, without introducing "then and there" between the assault and the blow. For although these words would be supplied by the natural construction of the sentence, and would be sufficient in civil actions and in indictments for common batteries, a greater certainty is here required, because the mortal stroke is so much higher an offence\* than what is implied in assaulting. Dyer, 69, a. 2 Hale, 80. Hawk.

b. 2. c. 23. s. 88. In drawing the conclusion that so the defendant murdered, &c. if time be again expressed, repugnancy should be carefully avoided. For if the injury was on one day and the death on another, and the indictment concludes that so the prisoner murdered, &c. on the *former*, it will be bad, because the felony is committed when the death occurs, and not when the cause of the death arises. 4 Co. 42. Hawk. b. 2. c. 23. s. 88. But if the latter day be stated, no objection can be taken, though it is said to be the best way to say generally, that so the defendant murdered, &c. without any repetition of time. Id. *ibid*. Notwithstanding these niceties respecting the statement of the day, a variance in evidence from that laid is immaterial. 2 Inst. 318. see ante 1 vol. 224. and books there cited. But then, if any forfeiture occurs, the jury must specially find the day on which the offence was committed. 2 Hale 179.

*Place* as well as time must be stated to the allegation both of the injury and the death, in order that it may appear that the charge is cognizable by the tribunal before which it is preferred. Cro. Eliz. 738. 2 Hale 180. And where the offence is begun in one county and completed in another, and the trial had in the latter by virtue of 2 and 3 Edw. VI. c. 24. the stroke ought to be alleged in the county where it was actually given. Hawk. b. 2. c. 23. s. 92. 1 East, P. C. 343.

But not only must all the circumstances of the offence be thus precisely stated, certain terms of art must be employed, or the indictment will still be defective. The term *feloniously* is indispensable here as in all other felonies. Cro. Eliz. 193. The offence must also be stated to have been committed with "*malice aforethought*," which we have seen enter so materially into the definition of the offence, and which it is absolutely necessary to aver. 2 Hale, 187. nor do the words "*feloniously murdered*," aid the omission. Dyer, 99. pl. 63. The indictment must also, after stating the circumstances, draw the conclusion that so the prisoner, the defendant, feloniously, &c. did kill and *murder*, the last word being an artificial term, which it is requisite to use. Id. *ibid*. Dyer 261. a. If either of these averments be omitted, the defendant can be found guilty of manslaughter only, and, indeed, the indictment for this offence differs only from one of murder in this omission, id. *ibid*. 1 East, P. C. 345, 6. But it is not necessary to repeat the words "*feloniously*, and of *malice aforethought*," to every allegation; for if the assault be stated to have been thus made, and the indictment proceed to aver that the defendant *then and there* struck, &c. it will be good without repeating them, because the acts are sufficiently connected. 4 Co. 41, b. Dyer 69, a. Godb. 65, 6. And where, in an indictment for poisoning, it was alleged that

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the prisoner did wilfully, feloniously, and of his malice aforethought, mix poison with other ingredients, in order that they might be eaten by the deceased, it was held that there was no occasion to add these words to the allegation of the delivery of the poison. 1 East, P. C. 346. The other circumstances, and the conclusion of the indictment, do not differ from those to be observed in other capital felonies. See 1 vol. c. 5.

Finding of  
Grand Jury.

*Finding of Grand Jury.*—It has been said that if the grand jury consider the crime to be manslaughter only, they may strike out the words “maliciously,” “of malice aforethought” and the conclusion charging murder, and then to find a true bill of the charge so amended. 2 Hale, 162. Bac. Abr. Indictment, D. 1 East, P. C. 347. But this seems very questionable; and it is certain, that if, without alteration, they were to indorse the indictment “*billa vera* for manslaughter,” the finding would be invalid, and might be quashed on motion. 2 Rol. Rep. 52. 3 Bulst. 206. 1 Rol. Rep. 407, 8 Cowp. 325. And, in such case, it is clearly the better course to prefer a bill for manslaughter, which the jury may immediately find. 2 Hale, 162. Bac. Abr. Indictment A. And though the indictment may charge one with murder, and the other with manslaughter only, yet if both are accused in the higher degree, the grand inquest should return their finding against one for the capital, and the other for the inferior offence; but in such case the bill will be good against the former, and nugatory as to the latter, 3 Bulst. 306. It is indeed said, that wherever the fact of homicide is clear, the jury should find the bill for murder, in order to prevent the defendant from being harassed with any fresh accusation; for if they throw out the bill, he may be again indicted, which can never take place after an open acquittal. Cowp. 325. Hawk. b. 2. c. 25. s. 2.

The evidence.

*The evidence.*—It is said to be a good general rule, that no man should be found guilty of murder, unless the body of the deceased is found; because instances have arisen of persons being executed for murdering others, who have afterwards been found to be alive. 2 Hale 290. ante 1 vol. 563. But this rule must be taken rather as a caution than as a maxim to be universally observed; for it would be easy, in many cases, so to conceal a body as to prevent it from being discovered. Indeed, in a case of supposed drowning in the sea, an objection founded on this rule was holden unfounded. 2 Leach, 569. And presumptive evidence must often be admitted where the crime is necessarily secret. Sometimes indeed it is better than the direct testimony of witnesses,\* because they may be influenced to commit perjury from motives of revenge, but it is scarcely possible so to

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influence circumstances, as to make them fix a conviction, that a particular individual is guilty. Where the charge is for murder of an officer in the attempt to execute a ca. sa., fi. fa., &c. it will be sufficient to produce the writ and warrant, without shewing the judgment of the previous proceedings. Fost. 311. One class of evidence, which is most frequently adduced in case of murder—the dying declaration of the party killed—we have fully considered already. See ante 1 vol. 568, 9. We have seen that it is not necessary to prove in evidence, the precise day or place laid in the indictment—but it will suffice if the time of the death be shown to be within a year and a day of the stroke, and the place of the death be shown to be within the jurisdiction of the court, before which the accusation is preferred, ante 1 vol. 222, 3, to 200—225.

*The verdict.*—If upon the trial of an indictment for murder, the prisoner appear to the jury to be guilty of manslaughter, they may find him guilty of the latter offence. 2 Hale, 302. Where the killing be proved, but the circumstances show it to have been a misfortune, or to have arisen in self-defence, they anciently found the special matter, and left the court to judge of its effect; who, it is said, might give judgment for manslaughter, or even murder, though the jury concluded *et sic per infortunium*, or *sic se defendendo*. 2 Hale, 302. And even if the court agreed with the jury as to the innocence of the party accused, the verdict was recorded, and his goods forfeited. Id. ibid. But it was long ago the practice, in cases of infancy and insanity, for the jury, under the direction of the court, to find a verdict of acquittal. 2 Hale 303. Fost. 279. And Mr. Justice Foster ably contends for the legality of the practice of finding general verdicts of not guilty, in every case where the mind is free from crime, and the defendant has been merely the unfortunate instrument of another's destruction. Fost. 271 to 289. He thinks, however, that there are some cases in which the party has been guilty of neglect, where the judge may properly direct a special finding, and so compel him to sue out his pardon under the statute of Gloucester, c. 9. which by that statute he is entitled to receive. All his personal property will, in this case, be forfeited, unless the king, in whom it is vested, thinks proper to restore it. Fost. 289. Where the jury doubt whether the facts proved amount in law to murder, they find a special verdict, in which the facts are stated as proved, and the inference is left to the judges; who may give judgment of death, if they think the offence is murder, though malice\* is not stated in terms, nor the killing found to be felonious. 9 Co. 69. Palm 548. The verdict.

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The sentence and punishment.

*Sentence and punishment.*—Clergy is taken away in all cases of murder and petit treason, from accessaries before as well as principals, and lands and goods are forfeited, and the forfeiture relates both to the stroke or other cause of the death. 1 East, P. C. 215. For the mode by which murder was ousted of clergy, see ante, 1 vol. 678. and all points respecting the sentence, the interval between it and the execution, with the mode of the latter, will be found in 1 vol. 704. The forfeiture is governed by the same rules which operate in all other felonies. See 1 vol. Index, title Forfeiture.

## INDICTMENTS FOR MURDER AT COMMON LAW, AGAINST AIDERS AND ACCESSARIES.

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*Aiders\* and accessaries.*—The law as to what constitutes principals in the second degree, and accessaries before and after the fact, has already been fully considered in the first Volume, see 1 vol. 256 to 267. and the mode of charging them in an indictment will be found in 1 vol. 269, 272, 3, 4. It seems almost anomalous in law, that where several are present at a murder, though one only gave the mortal blow, it may be charged as the act of all; or if one be particularly accused, it will be no variance to shew that the stroke proceeded from another. 1 Hale, 437, 8. Dougl. 207 n. 8. ante 1 vol. 259, 260. If several be indicted for murder, and the jury find a special verdict, it is necessary, in order to affect principals in the second degree, either to state that they were actually present in direct terms, or to shew some acts done by them, from which prescence can be necessarily inferred—or to allege that they were of the same party, in the same pursuit, and under the same engagements, with the person by whom the crime was actually committed. Dougl. 207.

## PETIT TREASON.

The offence.  
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*The offence.\**—Petit Treason is only an aggravated description of murder. Foster 107, 324, 336. All that is requisite to constitute the latter offence is equally necessary to complete the former; and it differs only in the relations subsisting between the parties, and the obedience which is broken by the offender. The instances in which it can be committed were reduced to three, by 25 Edw. III. st. 5. c. 2. though at common law they were more numerous. These are by a servant killing his master, a wife her husband, and an ecclesiastical person, either secular or regular, his superior. A servant who



kills his master after he has left him, on malice conceived before, will be guilty in this degree. Hale, 380. 3 Inst. 20. Under the term *master*, the master's wife is held to be included. Id. *ibid.* A child, in murdering either of his parents, can only be guilty of petit treason as a *servant*, in which capacity, if he receive wages from them, or sustenance in return for his labour, his crime will receive this deeper colouring. Id. *ibid.* A wife, though divorced a mensâ et toro, may be guilty of petit treason in killing her husband, for the vinculum matrimonii still subsists. 1 Hale 381. Nor can a woman whom a man may have married, having a former wife living, commit petit treason by murdering him, unless indeed she were his servant. 1 Hale 381. A husband who kills his wife is not thus guilty, because no obedience is broken, which is the foundation on which this aggravation of murder rests. A clergyman may commit this offence by the murder of the bishop who ordained him, or of him in whose diocese his benefice lies, or of the metropolitan of such suffragan diocesan or bishop. 1 Hale 381, 4. Bla. Com. 203. To constitute this offence, there must be such malice express or implied as would make the killing amount to murder, had no peculiar relation subsisted; so that if on an indictment of petit treason against a servant for the death of his master, it appear to have been done on a sudden provocation, or in the heat of passion, he may be found guilty of manslaughter only. 1 Hale 378. There may be accessaries to this crime both before and after the fact as to any other felony. Thus, if a servant murder his master by the procurement of the wife, he is a principal traitor, and she an accessary to the treason. But if the wife had incited\* a stranger to the same deed, she could be implicated only in murder, because the guilt of the accessary can never be of a higher kind than that of a principal. 1 Hale 379. If, however, the stranger had committed the murder, not only by her advice but in her presence, so as to make her a principal in the second degree, she would be guilty of treason, and he of murder only. 1 East, P. C. 358. And if a servant and indifferent person conspire to rob the master of the former, and in the prosecution of this design the master be killed in the presence of the servant, he may be indicted for petit treason. Id. *ibid.* And the same rule will apply if the servant or wife, intending to kill a stranger, kill, the one the master, and the other the husband by accident. 1 Hale 380. These principles apply also mutatis mutandis to a clergyman in relation to his superior.

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*The indictment.*—As all petit treason includes murder, it is contended by Lord Hale, and Mr. Justice Foster, that a person guilty of the former may be indicted for the latter. 1 Hale, 378. Post. 325, 8. But Foster thinks it advisable, The indictment.

where the prisoner is indicted for murder, and the evidence seems to prove him criminal in the higher degree, to quash the indictment and prefer another, because the judgment is different, and the prisoner is entitled to thirty-five peremptory challenges. Fost. 327. and see the case of Swan and Jeffereys. Fost. 104. And if through a mistake on the part of the prosecutor, the prisoner should be indicted for a common murder, and the evidence should shew that it is petit treason, it will not be advisable to direct the jury to find a verdict of not guilty, in order to prefer another indictment, lest the defendant should plead the acquittal, but the jury may be discharged of the indictment for murder, and another preferred for treason. Fost. 328. At all events, there is no doubt that a defendant, if tried for petit treason, may be found guilty of murder, if the indictment be properly framed; and this not only where the proof of the relationship fails, on which the aggravation depends, but where the fact itself, though satisfactorily proved by circumstantial evidence, is not supported by the testimony of two credible witnesses. 1 Leach 457. Fost. 328. Two persons implicated in the same crime, but one as a traitor and the other as a murderer only, may be joined in the same indictment, which if it conclude, that both of them *feloniously, traitorously, and of their malice aforethought, did kill and murder the deceased*, will be good for both, reddendo singula singulis. Fost. 329. But if they insist on their right to challenge, they must be tried separately, as, in petit treason, the defendant is entitled to thirty-five, and, in murder, to only twenty peremptory challenges. Fost. 106. The indictment for petit treason should contain\* all the requisites of one for murder, and must, in addition, charge the offence to have been *traitorously* committed. 1 East, P. C. 346. A former acquittal of petit treason is a good bar to an indictment of murder in respect to the same killing, though it seems doubtful whether an acquittal of murder is a sufficient bar to an indictment of petit treason: because, on the trial for petit treason, the defendant might certainly be found guilty of murder, if the latter crime were supported in evidence, but it is not so certain that, if the proof amounted to treason, on a charge of murder, any conviction could ensue.

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The evidence.

*The evidence.*—By the 1 Edw. VI. c. 12. s. 22. and 5 and 6 Edw. VI. c. 11. s. 12. to convict a man of either high or petit treason, two witnesses in open court or a voluntary confession are made requisite. These statutes were indeed supposed to be repealed by 1 and 2 Ph. and M. c. 10. which directed all prosecutions for treason to be conducted according to the course of the common law, though the intention of that act was, no doubt, rather to extend than diminish the

privileges of the party indicted. At the present day, however, it is certain that two witnesses are required to convict on every indictment for petit treason. 1 Leach 457. though where these cannot be procured, we have seen that the defendant may be convicted of murder. Radbourne's case, Leach 363. ante 743. In order to substantiate the relationship between husband and wife, on an indictment against the latter for petit treason, it is not necessary to prove the actual marriage either by producing a copy of the register, or by the testimony of some one present at its celebration; but it will be sufficient to shew cohabitation, and the language of both parties respecting each other. 1 East, P. C. 377.

*The sentence.*—Petit treason was first ousted of clergy, by 23 Hen. VIII. c. 1. to those who were convicted by verdict and confession; and by 25 Hen. VIII. c. 3. to those who stood mute, challenged peremptorily more than 35, or refused to answer. These acts were rendered perpetual by 32 Hen. VIII. c. 3. repealed by 1 Edw. VI. c. 12. and, it is said, revived by 5 and 6 Edw. VI. though the latter seems not quite certain, see 11 Co. 29. But the surest ground on which clergy is taken away, is under the words "wilful murder," in 1 Edw. VI. since we have seen that it is only an aggravated kind of murder, and subject, in a great degree, to the same rules. Fost. 330. 1 Hale 340. And it is under these words only, that clergymen are excluded from the benefit of their order, since their privileges are expressly excepted in all previous provisions. Accessories before the fact, as they were not named, so neither were they affected, till 4 and 5 Ph. and M. placed them on a footing with principals. The judgment against men has always been, "that they be drawn to the place of execution, and there hanged;" and women who were formerly burned, as in other kinds of treason, now receive the same sentence. 30 Geo. II. 48. The additional severities introduced by 25 Geo. II. c. 37. for the punishment of murder have been holden to apply also to petit treason, and therefore, in every case, they now form part of the sentence. Fost. 107. For a statement of these regulations, see 1 vol. 704, 5.

The sentence.

## MURDER ON THE STATUTE OF STABBING.

1 JAC. I. c. 8.

The offence.

[\*746]

*The offence.*—The 1 Jac. I. c. 8 was enacted at a critical period, and intended to remedy an immediate evil. It is said to have been directed against a number of persons, who adopted a method of deadly revenge by wearing short daggers under their clothes, which they were prepared to use on slight provocations, and those frequently sought for by themselves. Fost. 298. Its particular object is thus stated in the preamble, which may serve to direct us in its construction: “To the end, that stabbing and killing men on the sudden done and committed by many inhumane and wicked persons, in the time of their rage, drunkenness, hidden displeasure, or other passion of mind, may henceforth be restrained through fear of due punishment to be inflicted on such cruel and bloody malefactors, who heretofore have been emboldened by presuming on the benefit of clergy,” after which it proceeds to enact, “that every person which shall stab or thrust any person that hath not then any weapon drawn, or that hath not then first stricken the party which shall so stab or thrust, so that the person so stabbed or thrust shall thereof die within the space of six months then next following, although it cannot be proved that the same was done of malice aforethought, yet the party so offending shall be excluded from the benefit of his clergy, and suffer death as in case of wilful murder.” This enactment is followed by a proviso, that it shall not extend to any killing *se defendendo*, by misfortune, or in other manner than aforesaid; nor to manslaughter, in a *bona fide* attempt to preserve the peace; nor to death, happening in chastisement or correction of a child or servant when death was not intended. (d) This act was originally but temporary, but by 17 Car. I. c. 4. it is with other statutes continued till some further provision be made respecting it; and as this has never been done, it is in full force at present. It seems, however, to be the better opinion, that it is merely declaratory of the common law, passed to prevent the too indiscriminate compassion of juries, who admitted that\* to be an alleviation of homicide which still left it murder in law. Kel. 55. 1 Hale 456. Fost. 298. And, indeed, it seems exceedingly difficult to discover what this act has rendered capital which was not so on general

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(d) This last proviso is very singular; for it is difficult to conceive in what way stabbing could occur in lawful correction; and we have seen

already that wherever a deadly instrument is used to correct, and death ensues, it is murder at common law, ante 730.

principles; for surely it follows from the cases already considered, that where one man stabs another, who has drawn no weapon to oppose him, neither in self-defence, nor in support of public justice, it is *prima facie* murder. The statute indeed dispenses with the proof of express malice, but this, we have seen, is never requisite. At all events, the construction of this act has rendered it almost nugatory, if ever it appeared severe. Thus the case of a husband who takes another in the act of adultery with his wife has been holden not to be within it. 1 Hale 486. Sir Tho. Raym. 212. So where an officer entered violently and abruptly into a gentleman's chamber early in the morning to arrest him, without telling him his errand, or using any words of arrest, and the party ignorant of his official capacity, on the first surprise took down a sword that hung near and stabbed him, it was ruled manslaughter only, though the indictment was framed on the statute. 1 Hale 470. Fost. 298. And where any blow has been struck by the deceased, the act will not aggravate the offence, though the first assault proceeded from the defendant. Sir W. Jones 340. (e) Nor will the act affect cases of justifiable homicide, though within its letter. For where a man was beset by thieves in his house, who neither strike him nor have any weapon drawn, and he stabs one of them, he is not within the act. Fost. 298. And if on a false alarm of thieves, the master of the house killed one of his family by mistake, who had concealed himself in a closet, this was only holden to be homicide by misfortune. Cro. Car. 538.

With respect to what offences come within the words of the statute, it has been laid down, that shooting with any kind of fire arms, or thrusting from a staff or other blunt weapon, is intended by the terms "stab or thrust," 1 Hale 470. And this rule will extend to shooting with a bow or sling, or using any instrument to produce death by incision, in the hand of the party at the instant of discharging it, but not to throwing any kind of missile instruments or substances from the hand itself, so that no weapon remains in it at the time the stroke is given, Fost. 300. A stroke with a hammer is not stabbing within the intent of the statute, Sir W. Jones 432. Kel. 131. The person stabbed must also, to bring the case within the act, have no weapon then drawn, nor have first stricken. A common cudgel or other instrument fit for defence or annoyance is\* holden to be a weapon drawn within this exception, though not a small wand or cane which could do no serious injury. 1 Hale 470. And a sword within its scabbard could scarcely be thus described, [\*748]

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(e) This case is questioned by Lord Holt, Skin. 668.

and yet, as Mr. Justice Foster observes, there are some swords still remaining which probably have not been *drawn* since the revolution, as well fitted for attack or defence as an ordinary cudgel. Fost. 301. Whether the word *then* in this part of the act is to be confined to the instant of the stab, or extended to the whole of the combat, seems still to be undetermined, and it is a question on which the judges have been equally divided, and it seems almost equally doubtful whether the term "first stricken," means gave the first blow, or had struck at all previous to the stabbing. Sir W. Jones 340. Skin. 668, ante 747. Certain it is, that in no case is any aider, abettor or accessory ousted of clergy by this provision, for as they are not named in the act, the law will never presume they were intended. 1 Hale 468, 9 Allyn 44. 1 Ld. Raym. 141. ante 1 vol. 260. And it seems that in indictments on this act, the main question is, after all, whether the defendant be guilty of murder at common law, or to what degree is the killing reduced by the circumstances by which it was preceded Fost. 301, 2. The enactments in the 43 Geo. III. c. 5. as to stabbing, &c. with intent to murder, &c. will hereafter be considered.

The indictment.

*The indictment.*—It is said to have been the former practice to prefer two indictments, one for murder at common law, and the other for manslaughter under the statute, that if the defendant were acquitted on the former, he might be tried on the latter : but, as we have seen nearly the same evidence would be required to support both, it is not now the course to rely on more than one of them. 1 Hale 468. Fost. 299. The indictment under the statute must precisely follow its language, and must state, that the prisoner did with a sword, &c. *stab* the deceased, *he having no weapon drawn, nor having struck first*, or he can only be found guilty of common manslaughter, and must be admitted to his clergy. 2 Hale 170. It seems also that it is necessary to state, that the deceased died within six months after he received the injury, or, at all events, that must appear on the face of the proceedings. 1 East, P. C. 347, 8. As, under this act, clergy is taken away only from the individual actually stabbing, the fact must be laid truly, and not as in murder at common law indiscriminately as the stroke of all, or indifferently as that of either, ante 1 vol. 260. And therefore, if one be indicted for stabbing, and two others for aiding and abetting, and it be proved that one of the latter gave the stroke, all must be admitted to clergy, though they may be found guilty of manslaughter, as the two\* abettors might have been, had the indictment been correct as to the principal. The indictment usually concludes, contrary to the form of the statute ; but this is unnecessary, as no new offence is created and only an old privi-

[\*749]



lege is taken away 1. Hale 468, 9. ante 1 vol. 290. Where it is found that the prisoner has been guilty of manslaughter at common law only, these words may be rejected as surplusage.

## MURDER OF ILLEGITIMATE CHILDREN.

*The offence,\* &c.*—Until lately an anomalous rule of evidence existed respecting the murder of illegitimate children. By the 21 Jac. 1. c. 27, it is enacted, that if any woman be delivered of a child, which if born alive should by law be a bastard, and endeavour privately to conceal its death, the mother should be deemed to have murdered it, unless she could prove that it was born dead by the testimony of one witness. It is unnecessary to enter on the constructions of this statute, because it is repealed by 43 Geo. III. c. 58, which enacts, “that the trials of women charged with the murder of an issue of their bodies, male or female, which, being born alive, would by law be bastard, shall proceed and be governed by the like rules of evidence and presumption, as are by law allowed in respect of other trials of murder, provided that it shall be lawful for the jury, by whose verdict any prisoner charged with such murder shall be acquitted, to find, if it so appear in evidence, that she did, by secret burying or otherwise, endeavour to conceal the birth thereof; and thereupon it shall be lawful for the court to commit such prisoner to the common gaol, or house of correction, for any time not exceeding two years.” It has been holden that the liberty given to the jury by the last clause of this act to find the defendant guilty, applies not only to case where she is *indicted*, but where she is tried on the inquisition of the coroner, 2 Leach 1095. 3 Campb. 371.

The offence.  
[\*750]

## INDICTMENTS FOR MURDER BY VIOLENT MEANS.

Essex, to wit, (*f*) the jurors for our lord the king upon their oath present, that A. B. late of ———, in the parish of ———, in the county of ———, labourer (*g*) not having the

General commencement and conclusion of an indictment for murder. (*e*)

(*e*) See form Cro. C. C. 8th Ed. 272. 4 Bla. Com. Append. II. Co. Ent. 354. b. 355. a. 355. b. Edw. VI. c. 24, ante 733. and ante 1 vol. 179.  
(*f*) The venue is to be laid where the death occurred. See 2 and 3 217, and ante 2 vol. 1, 2, 3.  
(*g*) As to the name and addition of the defendant, see 1 vol. 202 to 217, and ante 2 vol. 1, 2, 3.

[[\*751]

fear of God before his eyes, but being moved and seduced by the instigation of the devil,\* (h) on the — day of —, (i) in the — year of the reign of our sovereign lord George the third, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, with force and arms, (k) at the parish aforesaid, in the county aforesaid, in and upon one E. F., (l) in the peace of God and our said lord the king then and there being, (m) feloniously, (n) wilfully and of his malice aforethought (o) did make an assault, and that,\* &c. [*here state the means and manner of the killing, and the consequent death, according to the facts, as in the succeeding precedents, and the general principles affecting which statement are considered ante 734, 5, 6, and then conclude thus.*] And so (p) the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B., him the said E. F. in the manner and by the means (or “*in manner and form*”) aforesaid, (q) (or in the conclusion of a second or subsequent count, “*last aforesaid,*”) feloniously, (r) wilfully, and of his malice aforethought, (s) did kill and murder, (t) against the peace of our said lord the king, his crown and dignity.

[\*752]

By shooting with a pistol in the belly, of which the party immediately died.  
(u)

[Commencement\* as ante 750, to the asterisk.] And that the said C. D. a certain pistol of the value of five shillings,

(h) These words are usually inserted in indictments for murder, but they do not appear to be requisite, Burn J. Indictment IX. 6 East, 472, 3, 4. ante 1 vol. 245.

(i) A day must be stated when the assault was made, though variance from the real time is immaterial, ante 736. and 1 vol. 222. 224.

(k) These words are unnecessary as the force is implied from the nature of the offence, Hawk. B. 2. c. 23. s. 85. id. c. 25. s. 90, 1 2 Hale, 187, ante 733, 4. and ante 1 vol. 240, 1.

(l) How to describe the party killed, see ante 733. and ante 1 vol. 211, &c.

(m) This allegation is unnecessary, and if the party deceased were breaking the peace the averment would be improper, 4 Co. 41. b. 1. East P. C. 345. 2 Hale, 186. ante 733.

(n) This word must be inserted, as in case of other felonies, Cro. Eliz. 193.

(o) This allegation is absolutely necessary in a charge of murder: where manslaughter only is meant, they are omitted, 1 Hale 187, ante 737.

(p) As to the necessity for this statement, though of a seeming conclusion from the premises, see ante 737. and ante 1 vol. 232. 243.

(q) Same precedent, allege time and place, as “*then and there, feloniously, &c.*” see Hand. Prac. 422. but this is unnecessary, and it seems better to omit these words, ante 736, 7. Hawk. b. 2. c. 23. s. 88.

(r) The term “*feloniously*” is essential, supra, note n.

(s) The omission of the words “*malice aforethought,*” will render the indictment merely a prosecution for manslaughter, ante 737. and ante 1 vol. 243. 2. Hale, 187.

(t) The term “*murder*” is essential to an indictment for murder, and if omitted, the prosecution will be merely for manslaughter, ante 737. and ante 1 vol. 243. 2 Hale 187. Dyer 261. a.

(u) This precedent is from Hand. Prac. 421, and see 10 Harg. St. Tr. 139. See a similar precedent charging the bullet as “*penetrating the brain,*” Imp. Off, Cor. App. 476. 1 Leach 360. and post. 756. Shooting with a gun, 9 Harg. St. Tr. 315. 1 Leach 360. 388 post. Shooting with a pistol 6 Harg. St. Tr. 195. 10 Harg.

(x) then and there charged with gunpowder and one leaden bullet, which said pistol he the said C. D. in his right hand then and there had and held, (y) then and there (z) feloniously, wilfully, and of his malice aforethought, (a) did discharge and shoot off, to, against, and upon the said A. B.; and that the said C. D. with the leaden bullet aforesaid, out of the pistol aforesaid, then and there, by the force of the gunpowder aforesaid, by the said C. D. discharged and shot off as aforesaid, then and there feloniously, wilfully, and of his malice aforethought, did strike, (b) penetrate and wound the said A. B. in and upon the right side of the belly of him the said A. B. near the right hip (c) of him the said A. B. giving to him the said A. B. then and there with the leaden bullet aforesaid, so as aforesaid discharged and shot out of the pistol aforesaid, by force of the gunpowder aforesaid, by the said C. D. in and upon the right side of the belly of him the said A. B. near the said right hip of him the said A. B. one mortal wound (d) of the depth of four inches and of the breadth of half an inch, (e) of which said mortal wound he the said A. B. then and there instantly died; (f) and so, &c. [*conclusion as ante 751.*]

[Commencement\* as ante 750 to \*.] And that he the said C. D. a certain pistol of the value of two shillings, then and there being charged with gun powder and a leaden bullet, which pistol he the said C. D. in his right hand then and there had and held at, against, and upon him the said A. B. then and there feloniously, wilfully and of his malice aforethought, did discharge and shoot off; and that he the said C. D. with

[\*753] Another form for murder by shooting with a pistol, where the party did not die immediately. (g)

St. Tr. 139. For shooting a constable in execution of office like the above, only adding after the word "*assault*," "he the said G. L. then and there being a constable of the said parish of &c. and in the due execution of his office," which may be omitted in a 2d count, 1 Leach, 515.

(x) This, though usual, does not seem requisite, 2 Hale 185.

(y) This is said to be essential, 2 Hale. 185: but it has been observed that there is no reason for such an averment, 1 East, P. C. 341. ante 734.

(z) Time must here be stated again, Dyer, 69. a. 2 Hale, 180. Hawk. B. 2. c. 23. s. 88.

(a) See ante 737. and 751.

(b) The word "*strike*" should always be inserted where the death is caused by violence, Cro. Jac. 635, 1 Bulstr. 105. 5 Co. 122. 2 Hale. 184. 6, 7.

(c) As to the description of the part where the wound or blow was given, see ante 734, 5. 2 Hale, 185.

(d) This should be averred, 1 Leach, 96. Kel. 125. 2 Hale 186.

(e) The length and depth of the wound must be shown, in order that it may appear adequate to the production of death, 5 Co. 121, 2. 2 Hale 186. Hawk. B. 2. c. 23. s. 81. See exception to this rule, ante 734, 5.

(f) It must always be stated that he died of the injury, 2 Hale, 186. 1 Rol. Rep. 137, ante 736. and time must be stated to the death as well as the stroke which is here sufficiently stated by the word "*instantly*," 1 East. P. C. 344. 2 Hale 186.

(g) This was the indictment against the Earl of Ferrera, on which he was convicted. 10 Harg. St. Tr. 480, where see the whole of the proceedings

the leaden bullet aforesaid, by force of the gunpowder aforesaid, out of the said pistol by him the said C. D. so as aforesaid discharged and shot off, him the said A. B. in an upon the left side of the said A. B. a little under the lowest rib of the said A. B. then and there feloniously, wilfully and of his malice aforethought, did strike and wound, giving to the said A. B. then and there, with the leaden bullet aforesaid, out of the said pistol so as aforesaid discharged and shot off, in and upon the said left side, a little under the lowest rib of the said A. B. one mortal wound, of the breadth of one inch and depth of four inches, of which said mortal wound the said A. B. on and from the said, &c. until, &c. at &c. aforesaid, did languish, and languishing did live, on which said, &c. about the hour of nine o'clock in the morning, he the said A. B. at, &c. aforesaid, of the mortal wound aforesaid, died. (h) And so, &c. [*as ante* 751.]

Against several, one as principal in the first degree, and the others as aiders and abettors, for shooting on shore a person who died within the admiralty jurisdiction. (i) [\*754]

Admiralty of England. (k)—The jurors for our lord the king upon their oath present, that W. P. late of, &c. J. E. late of, &c. H. V. late of, &c. G. C. late of, &c. [*five others of the like addition,*] and divers other evil disposed persons (whose names to the jurors aforesaid are as yet unknown) not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on, &c. with force and arms, upon the high sea, within\* the jurisdiction of the admiralty of England, about the distance of half a mile from Christchurch harbour in the county of Southampton, in and upon W. A. then and there being in the peace of God and our said lord the king, feloniously, wilfully and of their malice aforethought, did make an assault, and that the said W. P. a certain gun, of the value of five shillings, then and there charged with gunpowder and one leaden bullet, which gun he the said W. P. in both his hands then and there had and held, then and there feloniously, wilfully and of his malice aforethought, did shoot off and discharge to, against and upon him the said W. A. and that the said W. P. with the leaden bullet aforesaid, out of the gun aforesaid, then and there

d (h) This is the proper mode of description when time intervenes between the stroke and death, see *ante* 736, 7.

(i) From Cro. C. C. 7th Ed. 707. See the case reported, 1 Leach. 388. whence it appears one of the prisoners was convicted and executed. See another against principals, in 1st and 2nd degree, indictment against Reason and Tranter, 6 Harg. St. Tr. 195. See the indictment against Taylor and Shaw, 1 Leach 360. post. 756. on which the person charged as abettor, was found guilty

and the principal murderer acquitted, and the conviction was held valid. The indictment charged the wound as "in and upon the right side of the head of the deceased, near his right temple."

(k) As the venue must be laid where the death happened, and not where the cause of the death arose, the offenders were held to be properly triable at the Admiralty Sessions. 1 Leach 388. As to the Jurisdiction of the Court of Admiralty. See 1 vol. 151. to 156.

by force of the gunpowder aforesaid, by the said W. P. shot, discharged and sent forth as aforesaid, then and there feloniously, wilfully and of his malice aforethought did strike, penetrate and wound the said W. A. in and upon the right side of the belly of him the said W. A. giving to him the said W. A. then and there with the leaden bullet aforesaid, so as aforesaid by him the said W. P. shot, discharged and sent forth out of the gun aforesaid, by force of the gunpowder aforesaid, in and upon the said right side of the belly of him the said W. A. one mortal wound of the depth of four inches, and of the breadth of half an inch, of which said mortal wound he the said W. A. from the said, &c. until, &c. upon the high sea aforesaid, within the jurisdiction aforesaid, did languish, and languishing did live, on which said, &c. upon the high sea aforesaid, within the jurisdiction aforesaid, he the said W. A. of the mortal wound aforesaid died; and that the said J. E., H. V., G. C. &c. [*the names of the other five,*] and the said other persons (whose names to the jurors aforesaid are as yet unknown) at the time of committing the felony and murder aforesaid, then and there upon the high sea aforesaid, within the jurisdiction aforesaid, feloniously, wilfully and of their malice aforethought, were present, aiding, helping, abetting, comforting, assisting and maintaining the said W. P. to kill and murder the said W. A. in manner and form aforesaid: (1) and so the jurors aforesaid, upon their oath aforesaid, do say, that the said W. P., J. E., &c. [*as before*] and the said other persons (whose names to the jurors aforesaid are as yet unknown) then and there upon the high sea aforesaid, within the jurisdiction\* aforesaid, feloniously, wilfully and of their malice aforethought, in manner and form aforesaid, did kill and murder the said W. A. against the peace of our said lord the king, his crown and dignity. [\*755]

Middlesex, to wit. (o) [*The assault was stated jointly by the* Against a principal in the first and in the second degree, and an accessory before the fact to a murder, by shooting with a pistol; where the murder was committed in one county, and the accessory procured in another. (n)]

(1) These prisoners being principals in the first degree, the mortal stroke might have been laid as given by them all, or indifferently by any one of them; and if it appeared that any one had fired, in the presence, and by the incitement of the others, the indictment would have been supported. 3 T. R. 105. 1 Leach 359. n. a. Fost. 351. 425. Hawk. b. 2. c. 23. s. 76. 2 Hale 344. See the Law as to principals in the second degree at large, 1 vol. 256. to 262.

*Crim. Law.*

(n) See form 9. Co. 116. Burn. J. Accessary. This was the indictment against Lord Sanchar and his agents, on which he was convicted and executed, see 9 Co. 117. where see a full account of the proceedings. See the law of accessaries how to proceed against them, 1 vol. 261 to 275.

(o) The venue by 2 and 3 Ed. 6. c. 24. when a party is accessory in one county and the guilt is perpetrated in another, may be laid in either.

*principal in the first and in the second degree as ante 750.]* And the aforesaid R. C. with a certain gun called a pistol, of the value of five shillings, then and there charged with gunpowder and one leaden bullet, which gun the said R. C. in his right hand then and there had and held in and upon the aforesaid J. T. then and there feloniously, voluntarily, and of his malice aforethought, did shoot off and discharge, and the aforesaid R. C. with the leaden bullet aforesaid, from the gun aforesaid, then and there sent out, the aforesaid J. T. in and upon the left part of the breast of him the said J. T. then and there feloniously struck, giving to the said J. T. then and there with the leaden bullet as aforesaid, near the left pap of him the said J. T. one mortal wound of the breadth of half an inch and depth of five inches, of which mortal wound the aforesaid J. T. at, &c. aforesaid, (*p*) instantly died; and that J. I. feloniously and of his forethought malice, then and there was present, aiding, assisting, abetting, comforting, and maintaining the aforesaid R. C. to do and commit the felony and murder aforesaid, in form aforesaid; (*q*) and so the aforesaid R. C. and J. C. I. the aforesaid J. T. at, &c. aforesaid, in manner and form aforesaid, feloniously, voluntarily, and of their forethought malice, killed and murdered, against the peace, &c. And that one R. C. late of, &c. esquire, not having God before his eyes, but being seduced by the instigation of the devil, before the felony and murder aforesaid, by the aforesaid R. C. and J. T. in manner and form aforesaid done and committed, that is to say, on, &c. the aforesaid R. C. at the aforesaid parish of St. Margaret, in Westminster aforesaid, in the county of Middlesex aforesaid, to do and commit the felony and murder aforesaid, in manner and form aforesaid, maliciously, feloniously, voluntarily, and of his forethought malice, did stir up, move,\* abet, counsel, and procure, (*r*) against the peace] of the said lord the king that now is, his crown and dignity.

[\*756] For murder by shooting, against two as a principal in the first degree,

and the other as being present, aiding and assisting. (*s*)

[Commencement as ante 750. to the\*—*charging the assault as made by both defendants.*] And that the said J. T. a certain gun called a carbine of the value of ten pounds, then and there charged with gunpowder and a leaden bullet, which

(*p*) Though the venue is laid where the accessory proceeds, &c. the murder must be laid in the true county. 3 Inst. 49.

(*q*) See how to charge principals in 2nd degree last precedent, and 1 vol. 256 to 262.

(*r*) It seems advisable to follow the words of 4 and 5 Ph. and M. c. 4. which ousts accessories before the

fact of clergy, which are "command, hire, and maintain," but this is not absolutely requisite. And. 195.

(*s*) This was the indictment against Taylor and Shaw, on which the latter was convicted, but the former acquitted. The judges held the conviction valid, but Shaw received a pardon. 1 Leach 360.



said gun he the said J. T. in both his hands then and there had and held at and against the said S. G. then and there feloniously, wilfully, and of his malice aforethought, did shoot off and discharge, and that the said J. T. with the leaden bullet aforesaid, by means of shooting off and discharging the said gun so loaded, to, at, and against the said S. G. as aforesaid, did then and there feloniously, wilfully, and of his malice aforethought, strike, penetrate, and wound the said S. G. in and upon the right side of the head of him the said S. G. near his right temple, giving to him the said S. G. then and there with the leaden bullet aforesaid, by means of shooting off and discharging the said gun so loaded, to, at, and against the said S. G. and by such striking, penetrating, and wounding the said S. G. as aforesaid, one mortal wound in and through the head of him the said S. G. of which said mortal wound the said S. G. did then and there instantly die; and that the said A. S. then and there feloniously, wilfully, and of his malice aforethought, was present, aiding, helping, abetting, comforting, assisting, and maintaining the said J. T. in the felony and murder aforesaid, in manner and form aforesaid, to do and commit; and so, &c. [*as ante 751, stating that both defendants murdered, &c.*]

## INDICTMENTS FOR MURDER BY STABBING AND CUTTING.

[Commencement as ante 750, to the asterisk.] And that the said P. H. with a certain drawn sword made of iron and steel, of\* the value of five shillings, which he the said P. H. in his right hand then and there had and held, him the said S. C. in and upon the left side of the belly of him the said S. C. then and there feloniously, wilfully, and of his malice aforethought, did strike, thrust, stab, and penetrate, giving unto the said S. C. then and there, with the sword drawn as aforesaid, in and upon the left side of the belly of him the said S. C. one mortal wound of the breadth of one inch, and the depth of nine inches; of which said mortal wound he the said S. C. at, &c. aforesaid, from the said, &c. until, &c. did languish, and languishing did live, on which said, &c. the said S. C. at, &c. aforesaid, of the said mortal wound did die; and so, &c. [*conclusion as ante 751.*]

Indictment at common law, for murder by stabbing the deceased with a sword in the belly.  
(<sup>t</sup>)  
[\*757]

(<sup>t</sup>) From 4 Blac. Com. Append. 5. See similar precedents, 4 Harg. St. Tr. 513, 5. Id. 143, 6. Id. 195, 7. Id. 647, 9. Id. 14. 10. Id. 519.

Co. Ent. 354, b. 355. And see the next precedent, and the indictment under the statute of stabbing, post.

By stab-  
bing with  
a knife,  
(u)

[Commencement as ante 750, to the asterisk.] And that he the said A. S. with a certain knife of the value of sixpence, which he the said A. S. in his right hand then and there had and held, the said J. M. in and upon the left side of the belly, between the short ribs of him the said J. M. then and there feloniously, wilfully, and of his malice aforethought, did strike and thrust, giving to the said J. M. then and there with the knife aforesaid, in and upon the aforesaid left side of the belly, between the short ribs of him the said J. M. one mortal wound of the breadth of three inches and of the depth of six inches, of which said mortal wound he the said J. M. then and there instantly died; and so, &c. [*as ante 751, or if he languished, as ante 753.*]

By cutting  
the throat;  
where the  
deceased  
was taken  
to the  
London  
Hospital  
from the  
parish  
where the  
blow was  
given, and  
there di-  
ed. (w)

[Commencement as ante 750, to the asterisk.] And that the said A. B. with a certain case knife made of iron and steel, of the value of sixpence, which she the said A. B. then and there had and held in her right hand, the throat or gullet of him the said C. B. feloniously, wilfully, and of her malice forethought, did strike and cut; and that the said A. B. with the case knife aforesaid, by the striking and cutting aforesaid, did then and there give unto him the said C. B. in and upon the said throat or gullet of him the said C. B. one mortal wound of the length of three inches, and depth of one inch, of which said mortal wound he the said C. B. from the said, &c. to, &c. at, &c. aforesaid, and also at the parish of Saint Mary Matsellon, otherwise Whitechapel, in the same county, to wit, in the London Hospital there situate, did languish, and languishing did live; on which said, &c. in the year aforesaid, he the said C. B. in the hospital aforesaid, at the parish of St. Mary Matsellon, otherwise Whitechapel, in the county aforesaid, of the mortal wound aforesaid did die; and so, &c. [*as ante 751.*]

By throw-  
ing a  
knife. (x)  
[\*758]

[Commencement\* as ante 750, to the asterisk.] And that the said J. M. a certain large knife made of iron and steel, of the value of sixpence, which he the said J. M. then and there had and held in his right hand, at and against him the said A. B. then and there feloniously, wilfully, and of malice aforethought, did cast and throw, and him the said A. B. with the knife, aforesaid so cast and thrown as aforesaid, then and there feloniously, wilfully, and of malice aforethought, did strike and stab, and that the said J. M. with the knife aforesaid, so cast and thrown as aforesaid, in and upon the left side of the body of him the said A. B. near the groin, then and there feloniously, wilfully, and of his malice afore-

(u) From Cro. C. C. 8th Ed. 273.

(w) From Imp. Off. Cor. Append.  
474. 3rd Ed.

(x) From Imp. Off. Coroner. Ap-  
pendix, 486. 3rd. Ed.

thought, did strike and stab; and that the said J. M. with the knife aforesaid, so cast and thrown as aforesaid, did then and there, feloniously, wilfully, and of his malice aforethought, give unto him the said A. B. in and upon the said left side of the body of him the said A. B. near the groin, one mortal wound of the breadth of one inch, and depth of two inches, of which said mortal wound he the said A. B. then and there instantly died; and so, &c. [*as ante 751.*]

## INDICTMENTS FOR MURDER BY VIOLENT MEANS. BY STRIKING AND BEATING.

[Commencement as ante 750. to the asterisk.] And that the said C. D. a certain stone, of no value, which he the said C. D. in his right hand then and there had and held, in and upon the right side of the head, near the right temple of him the said A. B. then and there feloniously, wilfully, and of his malice aforethought, did cast and throw, and that the said C. D. with the stone aforesaid, so as aforesaid cast and thrown, the aforesaid A. B. in and upon the right side of the head near the right temple of him the said A. B. then and there feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound; giving to the said A. B. by the casting and throwing of the stone aforesaid, in and upon the right side of the head near the right temple of him the said M. one mortal wound, of the length of one inch, and of the depth of one inch, of which said mortal wound the said A. B. did then and there instantly die. And so, &c. [*as ante 751.*]

By casting  
a stone.  
(y)

Admiralty\* of England, (a) to wit, the jurors &c. That George Hindmarsh, late of, &c. mariner, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c. with force and arms upon the high sea, within the jurisdiction of the admiralty of England, to wit, about the distance of one league from Annamaboe on the coast of Africa, in and upon one S. B. C. then and there being on board of a certain sloop called the Eolus, and in the peace of God and our said lord the king, feloniously, wilfully, and of his malice aforethought, did make an assault.\* And

For murder at the admiralty sessions. First count, by striking with a piece of wood. Second count, by throwing overboard and drowning.

(y) See other precedents. Cro. C. C. 272.

(z) This was the indictment against Hindmarsh, on which he was convicted. An objection was taken that, as the body was not found, it would be contrary to the rule laid down by Lord Hale, to convict, as

the party might be alive, but this was over-ruled, and on strong circumstantial evidence the prisoner was found, guilty and executed pursuant to his sentence. 2 Leach 569. and ante 788, 9. and see next precedent.

(a) See ante 753.

(z)  
[\*759]

Second  
count.

that the said G. H. then and there with force and arms, and with a certain large piece of wood of the value of one penny, which he the said G. H. then and there had and held, in the right hand of him the said G. H. him the said S. B. C. in and upon the head of him the said S. B. C. feloniously, wilfully, and of his malice aforethought, did strike and beat, giving him the said S. B. C. by such striking and beating, &c. divers mortal bruises and contusions, in and upon the head, &c. of which said mortal bruises and contusions he the said S. B. C. did instantly die. And so, &c. (*as ante 751 to the end*)—[as in first count to\*] And that the said G. H. then and there, &c. with force and arms, feloniously, wilfully, and of his malice aforethought, did cast and throw the said S. B. C. from and out of the said sloop called the Eolus into the high seas there, by means of which said casting and throwing of him the said S. B. C. from and out of the said sloop into the high seas aforesaid, he the said S. B. C. in and with the waters thereof, upon the high seas aforesaid, within the jurisdiction of the admiralty of England aforesaid, then and there was suffocated and drowned, of which said suffocation and drowning he the said S. B. C. did then and there instantly die. And so, &c. [*conclusion as in next precedent.*]

For murder by striking with a bucket, tried in the court of admiralty.  
[\*760]

Admiralty of England, (b) The jurors, &c. that W. K. late of London, mariner, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c. with force and arms upon the high sea, near the coast of Malabar, in the East Indies, and within the jurisdiction of the admiralty of England, in and on board a certain ship, called the Adventure\* galley, (whereof the said W. K. was then commander,) then and there being, feloniously, wilfully and of his malice aforethought, did make an assault in and upon one W. M. in the peace of God and our said sovereign lord the king, then and there being, and then and there being in and belonging to the ship aforesaid, called the Adventure galley, and that the aforesaid W. K. with a certain wooden bucket, bound with iron hoops, of the value of eight pence, which he the said W. K. then and there had and held in his right hand, did violently, feloniously, wilfully and of his malice aforethought, beat and strike the aforesaid W. M. in and upon the right side of the head of him the said W. M. a little above the right ear of the said W. M. (he the said W. M. then and there being upon the high sea in the ship aforesaid, and within the jurisdiction of the admiralty of England as aforesaid,) giving to the said W. M. then and there with the bucket aforesaid, in and upon the aforesaid right part of the head of him the aforesaid W. M., a little above the right ear

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(b) See other precedents, Cro. C. C. 281. Supra and ante 753.

of him the said W. M. one mortal bruise, of which mortal bruise the aforesaid W. M. from the said, &c. until, &c. upon the high sea aforesaid, in the ship aforesaid, and within the jurisdiction of the admiralty of England aforesaid, did languish, and languishing did live, on which said, &c. he the said W. M. upon the high sea aforesaid, near the aforesaid coast of Malabar, in the East Indies aforesaid, in the ship aforesaid, called the Adventure galley, and within the jurisdiction of the admiralty of England aforesaid, of the said mortal bruise did die; and so the jurors aforesaid, upon their oath aforesaid, do say that the aforesaid W. K. him the said W. M. upon the high sea aforesaid, in the ship aforesaid, and within the jurisdiction of the admiralty of England aforesaid, in manner and form aforesaid, feloniously, wilfully and of his malice aforethought did kill and murder, against the peace, &c.

[Commencement as ante 750. to the asterisk.] And that the said A. B. with a certain pair of bellows of the value of one shilling, which he the said A. B. then and there had and held in both his hands, him the said C. D. in and upon the right side of the head near the right temple of him the said C. D., then and there feloniously, wilfully and of his malice aforethought, did hit and strike. And that the said A. B. did then and there give unto him the said C. D., by such striking at him with the bellows aforesaid, one mortal bruise in and upon the said right side of the head near the right temple of him the said C. D. of the length of four inches, and of the\* depth of two inches, of which said mortal bruise he the said C. D. then and there instantly died. And so, &c. (as ante 751.)

By striking with a pair of bellows.

(c)

[\*761]

[Commencement as ante 750. to the asterisk, stating that both the defendants made the assault.] And that the said M. K. with a certain iron poker of the value of sixpence, which he the said M. K. in his right hand then and there had and held, the said J. B. in and upon the hinder part of the head of him the said J. B. then and there feloniously, wilfully, and of his malice aforethought, did strike, giving unto him the said J. B. then and there with the said iron poker by the stroke aforesaid, in manner aforesaid, in and upon the hinder part of the head of him the said J. B. one mortal wound of the length of two inches, and of the depth of half an inch, of which said mortal wound he the said J. B. on the said, &c. did languish, and languishing did live, on which same, &c. he the said J. B. at, &c. aforesaid, of the mortal

Against the principals in first and second degree for murder by striking with a poker. (d)

(c) From Imp. Off. Coroner Appendix, 475. 3rd. Ed.

(d) See other precedents, Cro. C. A. 508. Cro. C. C. 278. Imp. Off. Cor. Append. 475. 3rd Ed. where it is said, "divers mortal wounds

and bruises," without specifying dimensions, and then it is generally averred that the deceased died of them all. But this seems insufficient; see ante 734.

wound aforesaid, died, and that the said M. K. at the time of committing the felony and murder aforesaid, in manner aforesaid, feloniously, wilfully, and of his malice aforethought, was present, aiding, helping, abetting, comforting, assisting, and maintaining the said M. K. in the felony and murder aforesaid, in manner and form aforesaid, to do, commit, and perpetrate. And so, &c. [charge that both murdered as ante 751.]

The like  
against a  
man for  
striking  
his wife  
with a po-  
ker. (e)

[Commencement as ante 750. to the asterisk.] And that the said C. D. with a certain iron poker of the value of one shilling, which he the said C. D. then and there had and held in both his hands, her the said M. D. in and upon the left side of the head near the left temple of her the said M. D. then and there feloniously, wilfully, and of his malice aforethought did hit and strike, and that the said C. D. did then and there give unto her the said M. D. by such striking of her with the poker aforesaid, one mortal wound of the length of two inches, and of the depth of one inch, in and upon the said left side of the head near the temple of her the said M. D. of which said mortal wound, she the said M. then and there instantly died. And so, &c. (as ante 751.)

By beat-  
ing with  
fists and  
kicking  
on the  
ground.  
(f)

[\*762]

[Commencement as ante 750. to the asterisk.] And that the said W. W. then and there feloniously, wilfully, and of his malice aforethought, did strike, beat, and kick the said E. D. with his hands and feet in and upon the head, breast, back, belly, sides, and other parts of the body of him the said E. D. and did then and there feloniously, wilfully, and of his malice aforethought, cast and throw the said E. D. down, unto, and upon the ground with great force and violence there giving unto the said E. D. then and there, as well by the beating, striking, and kicking of him the said E. D. in manner and form aforesaid, as by the casting and throwing of him the said E. D. down as aforesaid, several mortal strokes, wounds, and bruises, in and upon the head, breast, back, belly, sides, and other parts of the body of him the said E. D. to wit, one mortal wound on the left side of the belly of him the said E. D. of the length of five inches, and of the depth of six inches, (state the other wounds in the same way,) (g) of which said mortal strokes, wounds, and bruises,

(e) Cro. C. C. 278.

(f) See other precedents, Cro. C. A. 471. 1 Dougl. 207. 2 Stark. 375. Imp. Off. Cor. Append. 484. 3 Ed. and see the subsequent precedents.

(g) The printed precedents above referred to omit all particular description of the wounds. But this seems hazardous; for in all the ex-

ceptions to the rule that the extent of the wound must be stated, we find that it is described in effect to be of the utmost extent to which a wound in the part affected could extend, as where a man is stated to be run through the body, or a limb to be cut off. 5 Co. 121, 2. Hawk. b. 2. c. 23. s. 81. ante 734, 5. And the general rule seems to be, that



he the said E. D. from the said, &c. until, &c. as well at the parish aforesaid, in the county aforesaid, as also at the parish of Saint C. in the town of Shrewsbury, in the said county of S. did languish, and languishing did live, on which said, &c. the said E. D. at, &c. aforesaid, in the town of Shrewsbury aforesaid, in the county aforesaid, of the several mortal strikes, wounds, and bruises (h) aforesaid, died. And so, &c. (as ante 751.)

Middlesex to wit. The jurors for our sovereign lord the king upon their oath present, that E. Q. late of, &c. in, &c. labourer, otherwise called E. Q. late of the same place, labourer, together with a certain other person to the jurors aforesaid as yet unknown, not having the fear of God before their eyes, but being moved and seduced by the instigation of the devil, on, &c. in the ninth year, &c. with force and arms, at, &c. in, &c. in and upon one G. H. in the peace of God and our said lord the now king then and there being, feloniously, wilfully, and of their malice aforethought, did make an assault, and that the said person to the jurors aforesaid yet unknown with a certain stick of the value of one penny, which the\* said person, so to the jurors aforesaid as yet unknown, in his right hand then and there had and held the said G. H. in and upon the head of him the said G. H. on the right side thereof, near to the temple muscle, then and there feloniously, wilfully and of his malice aforethought did strike, giving to the said G. H. then and there with the stick aforesaid, by the stroke aforesaid in manner aforesaid, in and upon the head of him the said, G. H. in the right side thereof, near to the temple muscle, one mortal wound of the length of two inches, and of the depth of half an inch, of which said mortal wound the said G. H. on and from the said, &c. until and upon the day, &c. as well at, &c. aforesaid, as at the parish of, &c. in, &c. did languish, and languishing did live, and then and there, that is to say, on, &c. at, &c. [the place last named] he the said G. H. of the mortal wound aforesaid, died, and that the said E. Q. feloniously, wilfully and of his malice aforethought was present, aiding, helping, abetting, comforting, assisting and maintaining the said person so to the jurors aforesaid yet unknown in the felony and murder aforesaid, in manner and form aforesaid, to do and commit: And so the jurors, &c. do say that the said person so to the jurors aforesaid as

Against principal in second degree in murder, by beating with a stick on the temple, the party who actually gave the blow being unknown. (i) [\*763]

the wound or blow must appear to be adequate to produce death, ante 734, 5.; but here not only the wounds, but the parts of the body are left so uncertain, that no conclusion could possibly be drawn that any wound was mortal.

(h) It is right thus to draw the conclusion, ante 736.

(i) The defendant was tried and convicted. 4 Wentw. 46. See an indictment for murdering with a staff. Co. Ent. 355. a.

yet unknown, and the said E. Q. in manner and form aforesaid, feloniously, wilfully and of their malice aforethought, did kill and murder, against the peace, &c.

For murder by striking with a stick, choaking, squeezing and pressing, &c. against principals in the first and second degree, (k)

First count for striking.

Second count for squeezing.

[\*664]

Third count, stating the murder to be occasioned by the blows and squeezing.

[Commencement as ante 750. to the asterisk stating a joint assault.] And that he the said J. T. with a certain large stick of no value, which he the said J. T. in his right hand then and there had and held, her the said F. P. in and upon the head of her the said F. P. then and there feloniously, wilfully and of his malice aforethought, divers times did strike and beat, then and there giving to her the said F. P. by then and there so striking and beating of her the said F. P. with the stick aforesaid, as aforesaid, in and upon the right side of the head of her the said F. P. one mortal bruise, of which said mortal bruise, she the said F. P. then and there instantly died; and that the said J. M. at the time of committing the felony and murder aforesaid, by the said J. T. in manner and form aforesaid, feloniously, wilfully and of his malice aforethought was present, aiding, helping, abetting, assisting, comforting and maintaining the said J. T. in the felony and murder aforesaid, in manner and form aforesaid, to do, commit and perpetrate. And so, &c. (as ante 751. stating that both murdered,)—[As ante 750. to the asterisk.] In and upon the said F. P. feloniously, wilfully and of their malice aforethought did make an assault: and that the said J. T. with both his hands about the neck and throat of her the said F. P.\* then and there feloniously, wilfully and of his malice aforethought did fix and fasten, and that he the said J. T. with both his hands so as aforesaid fixed and fastened about the neck and throat of the said F. P., her the said F. P. then and there feloniously, wilfully and of his malice aforethought did choak and strangle, of which said choaking and strangling she the said F. P. then and there instantly died, and that (allege the aiding and abetting, and conclude as before) [as ante 750, 1.] In and upon the said F. P. feloniously, wilfully and of their malice aforethought did make an assault, and that he the said J. T. with a certain large stick of no value, which he the said J. T. in his right hand then and there had and held, her the said F. P. then and there feloniously, wilfully and of his malice aforethought, divers times did strike and beat, giving to her the said F. P., then and there, by striking and beating of her as last aforesaid, with the stick last aforesaid, in and upon the right side of the head of her the said F. P. one mortal bruise, and that the said J. T. also with both his hands about the neck and throat of her the said F. P. then and there feloniously, wilfully and of his malice aforethought did fix and fasten, and that he the said J.

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(k) See other precedents. Cro. C. C. 284. Starkie 373.

T. with both his hands so as last aforesaid fixed and fastened about the neck and throat of her the said F. P. the neck and throat of her the said F. P. then and there did violently squeeze and press, as well of which said striking and beating of her the said F. P. in an upon the right side of the head of her the said F. P. with the stick last aforesaid, as also of the squeezing and pressing of the neck and throat of her the said F. P. with both the hands of him the said J. T. as last aforesaid, she the said F. P. then and there instantly died, (allege the aiding and abetting, and conclude as in the preceding count, see Cro. C. C. 8th Ed. 284.)

[As ante 750. to the asterisk.] And that the said C. D. with both his hands, him the said A. B. did then and there in and upon the head and left temple of him the said A. B. feloniously, wilfully and of his malice aforethought, strike and beat; and that the said C. D. by the striking and beating aforesaid, did then and there feloniously, wilfully and of his malice aforethought, give unto him the said A. B. one mortal bruise in and upon the said left temple of him the said A. B. of the length of two inches and of the breadth of two inches, of which said mortal bruise he the said A. B. then and there instantly died. And so, &c. [as ante 751.]

[As ante 750. to \*] And that the said Philip, Earl of Pembroke and Montgomery,\* with the right fist of him the said Philip, &c. the said N. C. in and upon the left part of the head of the said N. C. then and there feloniously, wilfully, and of his malice aforethought, did strike and bruise, and him the said N. C. with his, the said P. E. of P. and M. right fist aforesaid, did beat and throw down to the ground, and that he the said Philip, &c. the said N. C. so lying upon the ground, in and upon the head, neck, breast, belly, sides and back, of him the said N. C. then and there feloniously, wilfully, and of his malice aforethought, did strike and kick, by reason of which said kicking and bruising of the said N. C. on the said left part of the head of the said N. C. with the said fist of him the said Philip, &c. and of the beating and throwing him to the ground aforesaid; and also by reason of kicking of the said N. C. with the said feet of him the said Philip, &c. on the head, neck, breast, belly, sides and back of the said N. C. he the said N. C. from the aforesaid, &c. to, &c. at, &c. aforesaid, did languish, and languishing, did live; on which said, &c. he the said N. C. of the striking and

By beating with hands about the head and temples. (l)

By striking, throwing to the ground, and kicking. (m) [\*765]

(l) From Imp. Off. Coroner Appendix 485. 3 Ed.

(m) This was the indictment against the Earl of Pembroke, on which he was, on the merits, found

guilty of manslaughter only. 2 Harg. St. Tr. 643. But quære if it should not state a mortal wound. See 1 Leach, 96. and ante 734.

bruising, beating and kicking aforesaid, died ; and so, &c. [*as ante* 751.]

By wilful-  
ly riding  
over a  
person  
with a  
horse. (n)

[Commencement as ante 750. to the asterisk.] And that the said C. D. then and there riding upon a certain horse of the price of twenty pounds, the said horse in and upon the said A. B. then and there feloniously, wilfully, and of his malice aforethought, did ride and force, and him the said A. B. with the horse aforesaid, then and there, by such riding and forcing did throw to the ground ; by means whereof the said horse with his hinder feet, him the said A. B. so thrown to and upon the ground as aforesaid, in and upon the hinder part of the head of him the said A. B. did then and there strike and kick, thereby then and there giving to him the said A. B. in and upon the said hinder part of the head of him the said A. B. one mortal fracture and contusion ; of which said mortal fracture and contusion he the said A. B. then and there instantly died. And so, &c. [*as ante* 751.]

For murder by  
strangling  
and afterwards  
throwing  
the body  
into a river. (o)  
\* 766]

And that they the said S. C., J. M., E. S. and W. R. a certain rope of no value, about the neck of the said S. S. then and there, feloniously, voluntarily, and of their malice aforethought, did put, place, fix and bind ; and the neck and throat of the said S. S. then and\* there, with the hands of them the said S. C., J. M., E. S. and W. R. feloniously, voluntarily and of their malice aforethought, did hold, squeeze and gripe ; and that they the said S. C., J. M., E. S. and W. R., with the aforesaid rope, by them the said S. C., J. M., E. S. and W. R. then as aforesaid about the neck of the said S. S. put, placed, fixed and bound, and by the squeezing and griping of the neck and throat of the said S. S. with the hands of them the said S. C. &c. as aforesaid, the said S. S. then and there by force and arms, &c. feloniously, voluntarily and of their malice aforethought, did choak and strangle ; by reason of which choaking and strangling of her the said S. S. by them the aforesaid S. C. &c. with the said rope about the neck of the said S. S. as aforesaid, placed, fixed and bound, and by the squeezing and griping of the neck and throat of the said S. S. with the hands of them the said S. C. &c. as aforesaid, the said S. S. then and there instantly died. And so, &c. [*as ante* 751.] and the said S. S. as aforesaid, by them the said S. C. &c. feloniously, voluntarily and out of their ma-

(n) See similar precedents. Cro. C. C. 280. Imp. Off. Cor. Append. 483. 3. Ed.

(o) This was the indictment against Mr. Cowper, a barrister, and several others, taken from 5 Harg. St. Tr. 193. where all the proceedings are very minutely recorded,

All the defendants were acquitted on the merits. See other indictments for killing under like circumstances. 2 Harg. St. Tr. 760: ibid. 195, 6 Cro. C. C. 284. and subsequent precedents, and see post in petit treason.

lice aforethought, choaked and strangled, into a certain river there, being called the Priory River, then secretly and maliciously, did put and cast, to conceal and hide the said S. S. so murdered, against the peace, &c.

[As ante 750. to 751. \* stating that both made the assault.] And that the said M. M. a certain cord of the value of six-pence, about the neck of the said J. D. G. then and there feloniously, voluntarily and of his malice aforethought, did put and fasten, and that the said M. M. with the cord aforesaid, by him so about the neck of the said J. D. G. put and fastened, then and there, him the said J. D. G. feloniously, voluntarily and of his malice aforethought, did choak and strangle, of which said choaking and strangling of him the said J. D. G. by the said M. M. in manner and form aforesaid done and perpetrated, he the said J. D. G. then and there instantly died. And that he the said C. W. then and there feloniously, voluntarily and of his malice aforethought, was present, aiding and abetting, comforting and maintaining the said M. M. in manner and form aforesaid, feloniously, voluntarily, and of his malice aforethought, the said J. D. G. to kill and murder. And so, &c. [as ante 751. charging that both murdered.]

By strangling with a rope, against principal in 1st and 2nd degree. (p)

[Commencement as ante 750. to the asterisk.] Being in a certain coach with one E. F. and a certain man yet unknown, in and\* upon the said E. F. violently, feloniously and of his malice aforethought, did make an assault, and that the said A. B. with the help and assistance of the said man unknown, with a pocket handkerchief with a coal in the same being put, of the value of two-pence, about the neck of him the said E. F. then and there feloniously, voluntarily, and of his malice aforethought, did put, fasten and bind, and that the said A. B. with the help and assistance of the said man unknown, with the said handkerchief with the coal aforesaid in it, about the neck of the aforesaid E. F. then as aforesaid, put, fastened, and bound him the said E. F. then and there, with force and arms, feloniously, and of his malice aforethought, did choak and strangle, of which choaking and strangling of the said E. F. he the said E. F. then and there instantly died.

For strangling with a handkerchief with the aid of a person unknown (q) [\*767]

(p) From 6 Harg. St. Tr. 829. See a similar indictment for the same murder against other parties. 6 Harg. St. Tr. 795. on both of which the defendants were convicted.

(q) See 4 Harg. St. Tr. 484. Against Harrison, for the murder of Dr. Andrew Clenche, on which he was convicted and executed. See also Starkie, 379.

For the murder of a bastard child. (r)

First count, by folding in a cloth.

Second count, for throwing a child into a privy, whereby it was smothered. (s) [\*768]

For killing a bastard child by strangling. (t)

That A. W. late of &c. single woman, on, &c. being big with a certain female child, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid the said female child alone and secretly from her body by the providence of God, did bring forth alive, which said female child so born alive, by the laws of this realm was a bastard; and that the said A. W. not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, afterwards to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, in and upon the said female bastard child, in the peace of God and our said lord the king, then and there being, feloniously, wilfully, and of her malice aforethought, did make an assault; and that the said A. W. with both her hands, the said female bastard child in a certain linen cloth of the value of two pence, feloniously, wilfully and of her malice aforethought, did put, place, fold and wrap up, by means of which said putting, placing, folding, and wrapping up of the said female bastard child in the said linen cloth by her the said A. W. as aforesaid, the said female bastard child was then and there choaked, suffocated and smothered, of which said choaking, suffocation and smothering, the said female bastard child then and there died; and so, &c. [*as ante* 751.] And the jurors, &c. [*the delivery and assault were stated as in first count.*] And that the said A. W. with both her hands, the said female bastard child into a certain privy there situate, wherein was a great quantity of human excrements and other filth, then and there feloniously, wilfully, and of her malice aforethought, did cast and throw, by reason of\* which said casting and throwing of the said female bastard child into the said privy, by her the said A. W. as aforesaid; the said female bastard child in the said privy with the excrements and filth aforesaid, was then and there choaked and suffocated, of which said choaking and suffocation the said female bastard child then and there died; and so, &c. [*as ante* 751.]

The jurors. &c. That M. L. late of, &c. on, &c. being big with a male child, the same day and year, at, &c. aforesaid, by the providence of God did bring forth the said child alive of the body of her the said M. alone and in secret, which said male child so being born alive, by the laws of this realm was a bastard; and that the said M. L. not having the fear of God before her eyes, but being moved and seduc-

(r) This indictment is framed on 21 Jac. 1. c. 27. in order to throw on the mother the proof that the child was born dead. The defendant was convicted on it. But as that act is repealed by 43 Geo. III. c. 58. there can now be no use in framing in-

dictments thus; but they may be framed as post. See notes ante 750.

(s) See another precedent for murder by this means, Imp. Off. Cor. Append. 432. 3 Ed.

(t) See other precedents, Cro.C.C. 7 Ed. 208. Starkie 383. note ante 750.



ed by the instigation of the devil, afterwards to wit, on the said, &c. as soon as the said male bastard child was born, with force and arms, at, &c. aforesaid, in and upon the said child, in the peace of God and our said lord the king, then and there being, feloniously, wilfully and of her malice aforethought, did make an assault, and that she the said M. with both her hands about the neck of him the said child, then and there fixed, him the said child, then and there feloniously, wilfully and of her malice aforethought, did choak and strangle, of which said choaking and strangling the said child then and there instantly died; and so, &c.

[Surrey to wit.] That M. T. late, &c. wife of J. T. on, &c. being big with a certain infant male child, by the providence of God, and solely and secretly brought forth the said infant male child alive from the body of her the said M. T. and that the said M. T. not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, afterwards to wit, on, &c. aforesaid, and as soon as the said infant male child was born, with force and arms, at, &c. aforesaid, in and upon the said infant male child, then and there being alive, and then and there being in the peace of God, and of our said lord the king, feloniously, voluntarily and of her malice aforethought, did make an assault; and that the said M. T. the said infant male child being alive, voluntarily, and of her malice aforethought, did then and there take in both her hands, and the said infant male child so being alive, then and there with both her hands aforesaid, fixed about the neck of the said infant male child so being alive, feloniously, voluntarily and of her malice aforethought, did choak and strangle, of which choaking and strangling of the said infant male child aforesaid, with both the said hands of the said M. the said infant male child then and there instantly died; and so, &c. [as ante 751.] [Second count\* exactly the same as first count, only stating it to be for the murder of her infant female child by strangling, as in first count.—Third count, for the murder of a certain infant child by strangling it.] And the jurors, &c. do further present, that the said M. T. on, &c. aforesaid, being big with a certain other infant male child, &c. &c. did make an assault, and that the said M. T. the said infant male child last aforesaid so being alive, did then and there take and carry to a certain shed, part of a certain building called the work-house, in the parish aforesaid, and the same infant male child last aforesaid, so being alive, did then and there in the said shed feloniously, voluntarily, and of her malice aforethought, hide, secrete, and conceal; and the same infant male child last as afore-

Against a married woman for the murder of her own male child by strangling it. (u)

Second count for murder of her own female child.

[\*769] Third count, for murder of her own infant child by strangling it.

Fourth count, for murder of her own infant male child by hiding and starving it.

Fifth  
count, for  
the mur-  
der of her  
own fe-  
male child  
by hiding  
and starv-  
ing it.  
Sixth  
count for  
the mur-  
der of her  
own infant  
child, by  
hiding and  
starving it.  
Seventh  
count, for  
murder of  
an infant  
child un-  
known by  
strangling  
it.

[\*770]

Eighth  
count.

Against a  
woman for  
drowning  
her own  
child in a  
pond. (w)

said so being alive, and so being hidden, secreted and concealed, she the said M. T. did then and there feloniously, voluntarily, and of her own malice aforethought, leave and desert, and to nourish, sustain, and provide for the same infant male child last aforesaid, so being alive, she the said M. T. did then and there wholly neglect and refuse, by reason of which said hiding, secreting, and concealing the same infant male child last aforesaid, in manner and form aforesaid, by the said M. T. and of the said refusal and neglect of the said M. T. to nourish, sustain, or provide for the said infant male child last aforesaid, the said infant male child last aforesaid then and therein instantly died; and so, &c. [*as ante* 751. *Fifth count, for murder of a certain other infant female child by hiding and starving it.—Sixth count, for murder of a certain other infant child* “to the jurors aforesaid unknown.”]

And the jurors, &c. do further present, that the said M. T. on the said twenty-first day of March in the said twenty-second year of the reign aforesaid, not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, with force and arms, at the parish of W. aforesaid, in the county aforesaid, in and upon a certain other infant child to the jurors aforesaid at present unknown, then and there lately born and being alive, and then and there, being in the peace of God and of our said lord the king, feloniously did make an assault, and that the said M. T. the said infant child, to the jurors aforesaid yet unknown, and, &c. did then and there take into both her hands, and the said infant child last aforesaid, to the jurors aforesaid unknown so being alive, then and there with both her hands aforesaid, fixed about the neck of the said infant child last aforesaid unknown so being alive, feloniously, &c. did choak and strangle, of which said choaking and strangling of the said infant child last aforesaid, to the jurors aforesaid unknown, with both the hands of the said M. the said infant child last aforesaid to the jurors aforesaid unknown, then and there instantly died; and so the jurors aforesaid upon their oath aforesaid say, that the said M. T. the\* said infant child last aforesaid, to the jurors aforesaid unknown, in manner and form last aforesaid, feloniously, &c. killed and murdered, against the peace, &c. [*Made an assault upon a certain other infant child, to the jurors aforesaid unknown, and secreted it, &c. stated the same as the foregoing.*]

[Commencement as ante 750. to the asterisk.] In and upon one M. H. the daughter of her the said C. H. (she the said M. H. then and there being an infant of tender years, to wit

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(w) See other precedents. Cro. Cor. App. 481. 3 Ed. C. C. 283. Starkie, 373. Imp. Off.

about the age of two years, and in the peace of God and our said lord the king,) feloniously, wilfully, and of her malice aforethought, did make an assault, and that the said C. H. then and there feloniously, wilfully, and of her malice aforethought, did take the said M. H. into both hands of her the said C. H. and did then and there feloniously, wilfully, and of her malice aforethought, cast, throw, and push the said M. H. into a certain pond there situate, wherein there then was a great quantity of water, by means of which said casting, throwing, and pushing of the said M. H. into the pond aforesaid, by the said C. H. in form aforesaid, she the said W. H. in the pond aforesaid, with the water aforesaid, was then and there choaked, suffocated, and drowned, of which said choaking, suffocating, and drowning, she the said M. H. then and there instantly died; and so, &c.

That W. B. late of, &c. and G. B. late of, &c. not having, &c. but being moved and seduced, &c. and of their malice aforethought, contriving and intending him the said W. F. feloniously to kill and murder, on the — day of November, in the year aforesaid, with force and arms at the parish aforesaid, in the county aforesaid, in and upon the said W. F. in the peace of God and of our said lord the king, feloniously, wilfully, and of their malice aforethought did make an assault, and that the said W. B. and G. B. then and there feloniously, wilfully, and of their malice aforethought, did compel and force him the said W. F. then and there against his will to take, drink, and swallow down, a great quantity, to wit, three half pints of distilled spirituous liquor commonly called Geneva; and that the said W. F. by the compulsion and force aforesaid of them the said W. B. and G. B. then and there against his will did take, drink, and swallow down, a great quantity of the distilled spirituous liquor called Geneva, to wit, the quantity of three half pints, by reason of which said drinking and swallowing down of the said great quantity of spirituous liquor called Geneva, in manner aforesaid,\* by the compulsion aforesaid, and against the will of him the said W. F. he the said W. F. then and there became suffocated and choaked, and thereof then and there instantly died; and so, &c. [*as ante* 751.]

That W. J. late of, &c. not having, &c. but moved and seduced, on, &c. at an unreasonable hour in the night, to wit, about the hour of eleven in the night of the same day, with force and arms, at, &c. aforesaid, in and upon the said E. B. then and there being in the peace of God and of our said lord

By forcing  
to drink  
spirits to  
excess.  
(x)

[\*771]

By forcing  
a sick per-  
son into  
the street.  
(y)

(x) From Imp. Off. Appendix 479, 3 Ed.

(y) From Imp. Off. Coroner, Appendix. 479. 3d ed. This will be murder. *Crim. Law.*

der, in analogy to the case of the son, who carried about his sick father in inclement weather, till he died. 2 Hale 432, 2. post 777, 8.

the king, and also then and there being in extreme sickness and weakness of body, occasioned by a fever, and then and there confined to her bed in the dwelling house of him the said W. J. there situate, feloniously, wilfully and of his malice forethought, did make an assault and that the said W. J. her the said E. B. from and out of of the said bed and also out of the said dwelling house, into the public and open street there, did then and there violently, feloniously, wilfully and of his malice forethought, remove, force and drive, and there leave; he the said W. J. then and there well knowing the said E. B. to be then in extreme sickness and weakness of body occasioned by the fever aforesaid, by means whereof she the said E. B. through the cold and inclemency of the weather, and for want of due care and other necessities requisite for a person in such sickness and weakness as aforesaid, then and there died; and so, &c. [*as ante* 751.]

Against  
Warden of  
Fleet and  
his deputy,  
for  
murder by  
confining  
a prisoner  
in an un-  
whole-  
some  
room, and  
otherwise  
occasion-  
ing his  
death by  
duress of  
imprison-  
ment. (z)

[\*772]

That J. H. from, &c. to, &c. next following, and long before and after was warden of the prison of the Fleet, &c. and that J. B. late of, &c. was during that time servant to J. H. and employed about the care of the prisoners, and that the said J. B. being a person of a cruel nature and savage disposition towards the prisoners then being in the same prison, on, &c. made an assault upon one E. A. then being a prisoner in the same prison, under the custody of the said J. H. and him the said E. A. then and there with force and arms, &c. unlawfully, feloniously, wilfully and of his malice aforethought, and without the consent of the said E. A. took, and him with force and arms to a certain room within the prison aforesaid, then newly built, unlawfully, feloniously and of his malice aforethought, conveyed and led, and him the said E. A. with force and arms, &c. in the said room for a long time, to wit, for the space of six weeks then next following, unlawfully, feloniously and of his malice aforethought, imprisoned and detained, and him the said E. A.\* then and there with force and arms, &c. for all the time last mentioned in that room without fire, without covering and without any kind of utensil whatsoever, unlawfully, feloniously and of his malice aforethought, forced to remain and be; (the walls of the aforesaid room made of bricks and mortar at the aforesaid time of the imprisonment of the said E. A. in the same being very moist, and the room aforesaid being situate over the common sewer of the said prison, and near the place where the dirt and filth of the said prison, and the excrements of the said prisoners where then usually deposited, by reason whereof the room aforesaid then was very unwholesome and greatly dangerous

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(z) This was the indictment against Huggins and Barnes, 2 *Ld. Raym.* 1574. That this is murder, see *Fost.* 321, 2. 2 *Stra.* 856. *ante* 725.

to the life of any person detained in the same.) And the jurors, &c. do further present, that the said J. B. and J. H. at the said time of the imprisonment of the said E. A. in that room, well knew that the said room had then been newly built, and that the walls of that room being made of bricks and mortar were then very moist, and that the said room was so situate as aforesaid; and that the said E. A. during the imprisonment and detaining of the said E. A. as aforesaid, in the said room, to wit, on, &c. by duress of the same imprisonment and detaining, became sick, and thereby from the same, &c. until, &c. in the room aforesaid languished, on which said, &c. the said E. A. by duress of the imprisonment and detaining aforesaid, in the room aforesaid, at, &c. aforesaid, died. And the jurors, &c. do further present, that the said J. H. being a person of cruel nature and savage disposition, and a grievous and inhuman oppressor of the prisoners in the same prison under his custody being, during the said imprisonment and detaining of the aforesaid E. A. in the room aforesaid, to wit, on the said, &c. and divers other days and times during that imprisonment and detaining, at, &c. aforesaid, feloniously, wilfully and of his malice aforethought, was present, aiding, abetting, comforting, assisting and maintaining the aforesaid J. B. feloniously, wilfully and of his malice aforethought, the said E. A. in manner aforesaid to kill and murder; and so, &c. [*as ante 751. charging both with the murder.*]

## INDICTMENTS FOR MURDER BY POISONING.

That M. B. late of, &c. spinster, daughter of F. B. late of the same place, gentleman, deceased, not having the fear of God before her\* eyes, but being moved and seduced by the instigation of the devil, and of her malice aforethought, contriving and intending him the said F. B. her late father in his lifetime to deprive of his life, and him feloniously to kill and murder, on, &c. and on divers other days and times between the said, &c. and, &c. with force and arms at, &c. aforesaid, did knowingly, wilfully, feloniously and of her malice afore-

Against a woman for the murder of her father, by intermixing arsenic with tea and water gruel, of which he drank at different times. (a)

[\*773]

(a) This was the indictment against Mary Blandy, on which she was convicted and executed. See her case with the indictment at large. 10 Harg. St. Tr. 1. The precedent may also be found in Starke, 364. See the indictment against

Weston for poisoning Sir Thomas Overbury. 1 Harg. St. Tr. 325. and see another form, Imp. Off. Cor. Append. 470. and see post 779: in Petit Treason against a woman for poisoning her husband.

thought, mix and mingle certain deadly poison, to wit, white arsenic, (b) in certain tea which had been at divers days and times during the time aforesaid prepared for the use of the said F. B. to be drank by him the said F. B. she the said M. B. then and there well knowing that the said tea with which she the said M. B. did so mix and mingle the said deadly poison as aforesaid, was then and there prepared for the use of the said F. B. with intent to be then and there administered to him for his drinking the same, and the said tea with which the said poison was so mixed as aforesaid, afterwards, to wit, on the said, &c. and on the said other days and times at, &c. aforesaid, was delivered to the said F. B. to be then and there drank by him, and the said F. B. (not knowing the said poison to have been mixed with the said tea) did afterwards, to wit, on the said, &c. and on the said divers other days and times there drink and swallow down into his body, several quantities of the poison so mixed as aforesaid with the said tea. And that the said M. B. might more speedily kill and murder the said F. B. she the said M. B. on the said &c. and on divers other days and times between the said, &c. and, &c. with force, and arms, at, &c. aforesaid, did knowingly, wilfully, feloniously and of her malice aforethought, mix and mingle certain deadly poison, to wit, white arsenic with certain water gruel, which had been made and prepared for the use of the said F. B. to be drank by him the said F. B. she the said M. B. then and there well knowing that the said water gruel with which the said poison was so mixed as aforesaid, was then and there prepared for the use of the said F. B. with intent to be then and there administered to him for his drinking of the same, and the said water gruel with which the said poison was so mixed as aforesaid, afterwards, to wit, on the said, &c. and on the said other days and times last aforesaid, at, &c. aforesaid, was delivered to the said F. B. to be then and there drank by him, and the said F. B. (not knowing the said poison to have been mixed with the said water gruel) did afterwards, to wit, on the said, &c. and on the day then next following, and on divers other days and times, afterwards and before the said, &c. there take, drink, and swallow down into his body several quantities of the said\* poison so mixed as aforesaid with the said water gruel, and the said F. B. of the poison aforesaid, and by the operation thereof, became (c) sick and greatly distempered in his body, of which said sickness and distemper of body occasioned by the said drinking, taking and swallowing down into the body of the said F. B. of the poison aforesaid so

{\*774}

(b) The kind of poison is not material, see ante 734.

(c) Quare, if time and place should not be alleged.



mixed and mingled in the said tea and water gruel as aforesaid, he the said F. B. from the said several days and times on which he had so taken, drank and swallowed down the same as aforesaid, until the said, &c. at, &c. aforesaid, did languish, and languishing did live, on which said, &c. at, &c. aforesaid, he the said F. B. of the poison aforesaid so taken, drank and swallowed down as aforesaid, and of the said sickness and distemper thereby occasioned, did die: and so, [as ante 751.]

That J. J. late of, &c. not having, &c. but being moved and seduced, &c. and of his malice aforethought, wickedly contriving and intending her the said M. S. with poison wilfully, feloniously and of his malice aforethought, to kill and murder, on, &c. with force and arms, at, &c. feloniously, wilfully and of his malice aforethought, did privately and secretly convey into and leave a great quantity of white arsenic, being a deadly poison, in the lodging room of her the said M. S. in the dwelling house of him the said J. J. there situate, and that the said J. J. contriving and intending as aforesaid, afterwards, to wit, on the same day and year aforesaid, the same white arsenic with a certain quantity of beer in the same room then and there being, then and there feloniously, wilfully and of his malice aforethought, did put, mix and mingle (he the said J. J. then and there well knowing the said white arsenic to be a deadly poison;) and that the said M. S. afterwards, to wit, on, &c. at, &c. aforesaid, did take, drink and swallow down a great quantity of the said beer with which the said white arsenic was mixed and mingled by the said J. J. as aforesaid, (she the said M. S. then and there not knowing that there was any white arsenic or other poisonous or hurtful ingredient, mixed or mingled with the said beer as aforesaid;) by means whereof she the said M. S. then and there became sick and distempered in her body; and the said M. S. of the poison aforesaid, so by her taken, drank and swallowed down as aforesaid, and of the sickness occasioned thereby from the said, &c.\* until the twenty-eighth day of the same month, in the same year, in the parish aforesaid, in the county aforesaid, did languish, and languishing did live; on which said, &c. at, &c. aforesaid, she the said M. S. of the poison aforesaid, and of the sickness and distemper occasioned thereby, did die; and so, &c. [as ante 751.]

For secretly conveying poison to the deceased. (d)

[\*775]

Indictment for murder, by plac-

(d) From Cro. C. C. 8th ed. 280. A man may be a principal by preparing and laying poison with intent that it may be taken, though it is

actually taken in his absence. 3 Inst 138. Fost. 349. 1 vol. 257. see the next precedent.

ing poison  
so as to be  
mistaken  
for medi-  
cine, lay-  
ing the of-  
fence in  
two  
counts (e)

[\*776]

thought, devising and intending T. B. to poison, kill and murder, on, &c. (f) with force and arms, at, &c. aforesaid, a certain quantity of arsenic, to wit, two drachms of arsenic (being a deadly poison,) feloniously, wilfully and of his malice aforethought, did put, infuse, mix and mingle in and together with \* water (he, the said J. D. then and there well knowing the said arsenic to be a deadly poison;) and that the said J. D. the said arsenic, so as aforesaid put, infused in, and mixed and mingled in and together with water, into a certain glass phial bottle of the value of one penny, did put and pour, and the said glass phial bottle with the said arsenic put, infused in, and mixed and mingled in and together with water as aforesaid, contained therein, then and there, to wit, on the same, &c. with force and arms, at, &c. aforesaid, feloniously, wilfully and of his malice aforethought, in the lodging room of the said T. B. did put and place, in the place and stead of a certain medicine then lately before prescribed and made up for the said T. B. and to be taken by the said T. B. he the said J. D. then and there feloniously, wilfully and of his malice aforethought, intending that the said T. B. should drink and swallow down into his body the said arsenic, put, infused, mixed and mingled in and together with water as aforesaid contained in the said glass phial bottle, by mistaking the same as and for the said medicine so prescribed and made up for the said T. B. and to be by him the said T. B. taken as aforesaid. And the jurors, &c. do further present, that the said T. B. not knowing the said arsenic put, infused in, and mixed together with water as aforesaid, contained in the said glass phial bottle so put and placed by the said J. D. in the lodging room of the said T. B. in the place and stead of the said medicine then lately before prescribed and made up for the said T. B. and to be taken by him the said T. B. in manner aforesaid, to be a deadly poison, but believing the same to be the true and real medicine then lately before prescribed and\* made up for and to be taken by him the said T. B. afterwards, to wit, on, &c. at, &c. aforesaid, the said arsenic so as aforesaid put, infused in, and mixed together with water by the said J. D. as aforesaid, contained in the said glass phial bottle, so put and placed by the said J. D. in the lodging room of him the said T. B. in the place and stead of the said medicine, then lately before prescribed and made up for the said T. B. he the said T. B. did take, drink and swal-

(e) From Cro. C. C. 282. Cro. C. A. 458. Starkie, 369. See notes to last precedent, and 1 vol. 257.

(f) If the poison was administered more than once, it should be added, "and on divers other days and

times, between the said —, and the said —, in the — year of the reign of his said majesty," as in the indictment against Miss Blandy, ante 772, 3.

low down into his body, by means of which said taking, drinking and swallowing down into the body of him the said T. B. of the said arsenic so as aforesaid put, infused in and mixed together with water by the said J. D. as aforesaid, he, the said T. B. then and there became sick and distempered in his body, of which said sickness and distemper of body, occasioned by the said taking, drinking and swallowing down into the body of him the said T. B. of the said arsenic, so as aforesaid put, infused in, and mixed together with water, by the said J. D. as aforesaid, he, the said T. B. on the said, &c. at, &c. aforesaid, did die ; and so, &c. [*as ante 751.*]

That G. L. late of, &c. not having, &c. but being moved and seduced, &c. and of his malice forethought, contriving and intending the said A. B. with poison feloniously to kill and murder, on, &c. with force and arms, at, &c. aforesaid, a great quantity of yellow arsenic, being a deadly poison, with a certain quantity of white wine, feloniously, wilfully and of his malice forethought, did mix and mingle, he the said G. L. then and there well knowing the said yellow arsenic to be a deadly poison ; and that the said G. L. afterwards to wit, on, &c. at, &c. aforesaid, the poison aforesaid, so as aforesaid, mixed and mingled with the white wine aforesaid, feloniously, wilfully and of his malice forethought, did send to her the said A. B. to take, drink and swallow down ; and that the said A. B. not knowing the poison aforesaid, in the white wine aforesaid, to have been mixed and mingled as aforesaid, afterwards to wit, on, &c. at, &c. aforesaid, the said poison so as aforesaid mixed and mingled by the procurement and persuasion of the said G. L. did take, drink and swallow down ; and thereupon the said A. B. by the poison aforesaid, so mixed and mingled as aforesaid, and so taken, drank and swallowed down as aforesaid, became then and there sick and distempered in her body, and the said A. B. of the poison aforesaid, and of the sickness and distemper\* occasioned thereby from the said, &c. until, &c. at the parish aforesaid, in the county aforesaid, did languish, and languishing did live ; on which said, &c. she the said A. B. at, &c. aforesaid, of the poison aforesaid, and of the said sickness and distemper thereby occasioned as aforesaid, did die. And so, &c. [*as ante 751.*]

By sending poison (g)

[\*777]

That A. B. late of, &c. not having the fear of God before his eyes, but being moved and seduced, &c. and of his malice aforethought, contriving and intending one R. S. then being

For the murder of an apprentice, where the death was caused by starving. (h)

(g) From Imp. Off. Cor. App. 477. 3d ed. A party who procures another to administer poison who is ignorant of the nature of the mixture is a principal in the first de-

gree though absent. Kel. 52, 3. 1 vol. 257.

(h) From 8 C. C. C. 279. See two next precedents.

an apprentice to him the said A. B. feloniously, wilfully, and of his malice aforethought, to starve, kill, and murder, on, &c. and on divers days and times, between that day, and, &c. with force and arms, at, &c. aforesaid, in and upon the said R. S. his apprentice aforesaid, in the peace of God, and of our said lord the king, then and there being, feloniously, wilfully, and of his malice aforethought, did make divers assaults, and that the said A. B. on the said, &c. at, &c. him the said R. S. in a certain room in the dwelling house of him the said A. B. there situate, feloniously, wilfully, and of his malice aforethought, did secretly confine, and imprison, and that the said A. B. from the said, &c. until, &c. at, &c. aforesaid, feloniously, wilfully, and of his malice aforethought did neglect, omit and refuse to give and administer, and to permit and suffer to be given and administered to him the said R. S. sufficient meat and drink necessary for the sustenance, support, and maintenance of the body of him the said R. S. by means of which said confinement and imprisonment, and also of such neglecting and refusing to give and administer, and to permit and suffer to be given and administered, such meat and drink as were necessary and sufficient for the sustenance, support, and maintenance of the body of him the said R. S. he the said R. S. from the said, &c. until, &c. at, &c. aforesaid, did languish and pine, and became greatly emaciated and consumed in his body, and during the time aforesaid there languishing did live, on which, &c. at, &c. aforesaid, he the said R. S. of such confinement and imprisonment, and want of such due and necessary meat and drink, for the sustenance, support, and maintenance of his body, did die, and so, &c. [*as ante* 751.]

By confining an apprentice and starving him to death. (i)  
[\*778]

[*As in the last precedent to the end of statement of the assault.*] And that the said C. D. afterwards to wit, on the said, &c. continually\* from thence until, &c. aforesaid, feloniously, wilfully, and of his malice aforethought did keep, confine, and imprison him the said A. B. in a certain cellar, part, or parcel, of a certain messuage or dwelling house, situate and being at the parish aforesaid, in the county aforesaid, and during all that time did, feloniously, wilfully, and of his malice aforethought, neglect and refuse to give and administer, or permit to be given or administered to him the said A. B. being so confined and imprisoned as aforesaid, sufficient meat, drink, victuals, and other necessities proper and requisite for the sustenance, support, and maintenance of the body of him the said A. B. by means of which said con-

(i) From Cro. C. A. 464. See a similar precedent for confining and starving a wife to death. Starkie,

372, and see count against a mother for starving her bastard child, ante 769, and Imp. Off. Cor. 482, 3d. ed.

finement and imprisonment, and also for want of sufficient meat, drink, victuals, and other necessaries, as were proper and requisite for the sustenance and support, and maintenance of the body of him the said A. B. he the said A. B. from, &c. until, &c. in the said cellar, at, &c. aforesaid, did linger and pine, and became greatly emaciated and consumed in his body, and during all that time did languish, and languishing did live; on which said, &c. he the said A. B. at, &c. aforesaid, of such confinement and imprisonment, and for want of such sufficient meat, drink, victuals, and other necessaries, as were proper and requisite for the sustenance, support, and maintenance of his body, did miserably perish and die; and so, &c. [*as ante* 751.]

### INDICTMENTS FOR PETIT TREASON.

That A. B. late of, &c. labourer, late the servant of E. F. his master, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and of his malice aforethought contriving and intending him the said E. F. his said master to deprive of his life, and him feloniously and traitorously to kill and murder, on, &c. with force and arms, at, &c. in and upon the said E. F. his said master, in the peace of God and our said lord the king, then and there being, feloniously, traitorously, (l) wilfully, and of his malice aforethought, did make an assault, and that the said A. B. a certain silk handkerchief of the value of one shilling, about the neck of him the said E. F. then\* and there feloniously, traitorously, wilfully, and of his malice aforethought, did fix, tie, and fasten, and that the said A. B. him the said E. F. with the silk handkerchief aforesaid, did then and there choak, suffocate, and strangle, of which said choaking, suffocation, and strangling, he the said E. F. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B. the servant of the said E. F. him the said E. F. his said master, in manner and by the means aforesaid, feloniously, traitorously, (l) wilfully, and of his malice aforethought, did kill and murder, against the peace, &c.

For petit treason, where a servant strangled his master. (k)

[\*779]

That H. R. late of, &c. widow, late servant of H. M. widow, her mistress, not having, &c. but being moved and se-

Against a servant for murder and

(k) From Cro. C. C. 279. See other precedents. Imp. Off. Cor. 474. 3d ed. as to the offence, &c. See ante 742. (l) This word must always be inserted, or judgment can only be given for murder. 1 East, P. C. 346.

petty treason, in one count. (m)

duced, &c. and of her malice aforethought, contriving and intending her the said H. M. her mistress to deprive of her life, and feloniously and traitorously to kill and murder, on, &c. with force and arms, at, &c. aforesaid, in and upon the said H. M. the mistress of the said H. R. feloniously, traitorously, wilfully and of her malice aforethought, did make an assault, and that the said H. R. with a certain stick, having a bayonet fixed at the end thereof, of the value of two shillings, which stick she the said H. R. in both her hands then and there had and held, in and upon the top of the head of her the said H. M. did then and there feloniously, traitorously, wilfully and of malice aforethought of her the said H. R. strike, cut, stab and penetrate, giving to the said H. M. by such striking, cutting, stabbing and penetrating of the said H. M. with the bayonet so fixed at the end of the stick aforesaid, in and upon the top of the head of her the said H. M. one mortal wound, of the length of one inch, and of the depth of half an inch, of which mortal wound, the said H. M. from the said, &c. until, &c. in and at, &c. aforesaid, did languish, and languishing did live, on which said, &c. at &c. aforesaid, of the mortal wound aforesaid, she the said H. M. died. And so, &c. [*as supra* 779].

For petty treason against a woman for poisoning her husband. (n) [\*780]

That A. B. late of, &c. widow, late wife of J. B. late of the same place, yeoman, deceased, not having, &c. but being moved and seduced, &c. and of her malice aforethought, contriving, devising and intending him the said J. B. her said late husband, to deprive of his life, and him feloniously and traitorously to kill and murder,\* on, &c. with force and arms, at, &c. aforesaid, feloniously, traitorously, wilfully, and of her malice aforethought, did mix and mingle a great quantity of deadly poison, called arsenic, into a quantity of water gruel; and that the said A. B. then and there feloniously, traitorously, wilfully, and of her malice aforethought, did give and deliver the said water gruel, so mixed with the said poison aforesaid, to the said J. B. her said then husband, to be drank by him the said J. B. (she the said A. B. then and there well knowing the said arsenic to be a deadly poison.) And that the said J. B. by the persuasion and instigation of the said A. B. the said water gruel, so mixed with poison as aforesaid, not (knowing the same to be deadly poison) did then and there drink, and swallow down into his body, by which drinking and swallowing of the said water gruel, so

(m) This was the indictment against Henrietta Radbourne. 1 Leach, 457. The charge, though clearly proved by circumstantial evidence, was not supported by two witnesses, as is necessary in petit treason, (see ante 774.) but the

prisoner was convicted of murder, that conviction was held valid, and she was executed pursuant to her sentence.

(n) Cro. C. C. 8th ed. 471. 2 Stark. 361.



mixed with poison as aforesaid, the said J. B. then and there became sick and greatly distempered in his body, of which sickness and distemper, he the said J. B. from the said, &c. until, &c. did languish, and languishing did live, on which said, &c. the said A. B. at, &c. aforesaid, of the said sickness and distemper, occasioned by the drinking of the said water gruel, so mixed with poison as aforesaid, died. And so, &c. [as in the precedent ante 779.]

That A. B. late of, &c. widow, late the wife of C. B. late of, &c. not having, &c. but being moved and seduced, &c. and of her malice aforethought, contriving and intending him the said C. B. her said late husband, to deprive of his life, and him feloniously, and traitorously, to kill and murder, on, &c. with force and arms, at, &c. aforesaid, in and upon the said C. B. her said husband, in the peace of God and of our said lord the king, then and there being, feloniously, traitorously, wilfully and of her malice aforethought, did make an assault, and that the said A. B. with a certain iron pin of a window shutter, of the value of six pence, which she the said A. B. then and there had and held in her right hand, him the C. B. in and upon the head of him the said C. B. near unto the left temple, did then and there strike and beat, thereby, then and there, giving unto him the said C. B. with the iron pin aforesaid, in and upon the head of him the said C. B. near unto the left temple aforesaid, one mortal wound, of the length of two inches, and depth of half an inch, of which said mortal wound, he the said C. B. from the said, &c. to, &c. at, &c. aforesaid, did languish, and languishing did live, on which said, &c. in the year aforesaid, in, &c. aforesaid, of the mortal wound aforesaid, he the said C. B. died. And so, &c. [as ante 779.]

That\* M. H. late of, &c. yeoman, and E. B. late of, &c. widow, (late the wife of S. B. late of the same place, labourer,) not having, &c. but being moved and seduced, &c. on, &c. with force and arms, at, &c. aforesaid, feloniously, wilfully, and of their malice aforethought, and she the said E. B. also, traitorously, did make an assault upon the said S. B. the husband of her the said E. B. in the peace of God and our said lord the king, then and there being, and that the said M. H. a certain gun of the value of five shillings, then and there charged, and loaded with gunpowder and divers leaden shot, which gun, he the said M. H. in both his hands then and there had and held, to, against, and upon the said S. B. then and there, feloniously, wilfully, and of his malice

For petit treason against a wife by killing her husband with the pin of a window shutter. (o)

[\*781] For murder and petit treason by shooting, viz. against the person who shot, for murder, and against the widow of the deceased, who aided and assisted, for petit treason. (p)

(o) From Imp. Off. Cor. 471. 3d. ed.

(p) From Cro. A. 456. 10 St. Tr. 1. See also Stark. 368. This joinder

is proper, though if the parties chose to insist on their challenges, they must be tried separately. Foot. 329, 106.

aforethought, did shoot and discharge, and that the said M. H. with the leaden shot aforesaid, out of the gun aforesaid, then and there, by force of the gunpowder, shot, discharged, and sent forth as aforesaid, the aforesaid S. B. in and upon the left side of the head of him the said S. B. near the left ear of him the said S. B. then and there, with the leaden shot aforesaid, out of the gun aforesaid, by the said M. H. so as aforesaid shot, discharged, and sent forth, feloniously, wilfully, and of his malice aforethought, did strike, penetrate, and wound, giving to the said S. B. with the leaden shot aforesaid, so as aforesaid shot, discharged, and sent forth out of the gun aforesaid, by the said M. H. in and upon the left side of the head of him the said S. B. near the left ear of him the said S. B. one mortal wound, of the depth of four inches, and of the breadth of two inches, of which said mortal wound the said S. B. then and there instantly died. And that the said E. B. the wife of him the said S. B. then and there, feloniously, traitorously, wilfully, and of her malice aforethought, was present, aiding, helping, abetting, comforting, assisting, and maintaining the said M. H. the felony and murder aforesaid, in manner and form aforesaid, to do and commit; and so the jurors, &c. do say, that the said M. H. feloniously, wilfully, and of his malice aforethought, and the said E. B. feloniously, traitorously, wilfully, and of her malice aforethought, him the said S. B. then and there, in manner and form aforesaid, did kill and murder, against the peace, &c.

### INDICTMENTS FOR MURDER, ON THE STATUTE OF STABBING, 1 Jac. 1. c. 8.

[\*782]

On the 1  
Jac. 1. c.  
8. for stab-  
bing. (g)

That\* J. A. late of, &c. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c. at the hour of nine in the afternoon of the same day, with force and arms, at, &c. aforesaid, in and upon one G. H. in the peace of God and of our said lord the king, then and there being, the aforesaid G. H. not having any weapon then drawn, nor the aforesaid G. H. having first stricken, (r) the said J. A. feloniously did make an assault, and that the aforesaid J. A. with a certain drawn sword, of the value of five shillings, which he the said

(g) See similar precedents, Burn. J. Indictment ix. Cro. C. C. 273. Starkie, 382. and Imp. Off. Cor. 487. See notes at large, ante 746 to 749.

(r) These words are necessary, as being part of the description of the offence in the statute. 2 Hale, 179.

J. A. in his right hand then and there had and held, the said G. H. in and upon the right side of the belly, near the short ribs of him the said G. H. the aforesaid G. H. as is aforesaid, then and there not having any weapon drawn, nor the aforesaid G. H. then and there having first stricken, (s) the said J. A. then and there, feloniously did stab and thrust, giving unto the said G. H. then and there, with the sword aforesaid, in form aforesaid, in and upon the right side of the belly, near the short ribs of him the said G. H. one mortal wound, of the breadth of one inch, and of the depth of nine inches, of which said mortal wound, he the said G. H. then and there instantly died. And so the jurors aforesaid, upon their oath aforesaid, do say, that the said J. A. him the said G. H. on the aforesaid, &c. at, &c. aforesaid, in manner and form aforesaid, feloniously did kill, against the peace, &c. and against the form of the statute, (t) &c.

That C. D. late of, &c. [*as in the last indictment to the end, and then as follows.*] And the jurors, &c. do further say, that S. W. late of, &c. and G. W. late of, &c. at the time of the doing, and\* committing of the felony and manslaughter aforesaid, feloniously were present, abetting, aiding, assisting, comforting, and maintaining the said C. D. to kill and slay the said A. B. in manner aforesaid, against the peace, &c.

The like,  
charging  
an aider  
with abet-  
ting. (u)  
[\*783]

## INDICTMENTS FOR MANSLAUGHTER.

[As ante 750 to \* omitting the terms, "malice aforethought."]  
in the king's highway, there, in and upon one E. F. felonious-

Against  
the driver  
of a cart  
for man-  
slaughter.

(s) See ante 747, 8.

(t) This conclusion is unnecessary, as the statute creates no new offence, but only takes away clergy where before it was allowed; but it cannot prejudice; and if the defendant is found guilty of manslaughter at common law, may be rejected as superfluous. 1 Hale, 468, 9. ante 748, 9.

(u) From Imp. Off. Cor. 486. As the statute takes away clergy only from the party actually stabbing, the principal in second degree, where the offence would be manslaughter had death occurred by other means, is guilty of manslaughter only. In that case, if it were proved in evidence that the blow was given by the party charged as an abettor,

both could only be found guilty of simple manslaughter. (v)

(v) See similar precedent, Starke, 381. The nature of manslaughter will be found sufficiently stated in the description of murder, when the alleviations of that offence were considered, see ante 738. It may be described exactly like murder, except in the omission of the words "murder," and "malice aforethought." Like murder it was originally clergyable and has never been excluded from the benefit of clergy by any statute, except in case of stabbing already noticed. Its punishment is therefore the same with other clergyable felonies. See 4 Bla. Com. 190 to 193

ly and wilfully, did make an assault, and a certain cart of the value of five pounds, then and there drawn by two horses, of the value of ten pounds, which he the said A. B. was then and there driving in and along the said highway, in and against the said E. F. feloniously did force and drive, and him the said E. F. did thereby, then and there, throw to and upon the ground, and did then and there, feloniously, force and drive one of the wheels, to wit, the off wheel of the said cart, against, upon, and over the head of him the said E. F., then lying upon the ground, and thereby did then and there give to the said E. F. in and upon his head, one mortal fracture and contusion, of which the said E. F. then and there instantly died. And so the jurors, &c. do say, that the said A. B. him the said E. F., in manner and by the means aforesaid, feloniously, did kill and slay, against the peace, &c.

### MAYHEM. (w)

#### PRELIMINARY NOTES ON OFFENCE, &c.

#### I. AT COMMON LAW. (x)

[\*784]  
The of-  
fence.

*Mayhem*,\* at common law, is the violently depriving another of the use of such of his members as may render him less able in fighting, either to attack his adversary or to defend himself. Hawk. b. 1. c. 55. s. 1. The mere disfiguring, therefore, of the party injured, in such a way as not to affect his strength or power of fighting, such as the cutting off the ear, slitting the nose, &c. do not come within this definition. Hawk. b. 1. c. 55. s. 2. But the cutting off a limb, or disabling or weakening the hand or finger, or striking out an eye or front tooth, or castrating, which is supposed to debilitate and render unwarlike, were always regarded as mayhems, 4 Bla. Com. 205. To bring any wound within this denomination, it is said it must be done maliciously, though it matters not how sudden the occasion. 1 East, P. C. 393. All malicious maiming is said at common law to be felony, though none was ever capital except castration. Hawk. b. 1. c. 55. s. 3. The last offence seems indeed to have been regarded as highly criminal, on whatever provocation it was committed. 3 Inst. 118. 4 Bla. Com. 206. The ancient law as to

(w) As to this offence in general see Hawk. b. 1. c. 55. 3 Inst. 118. Com. Dig. Justices, S. 6. 4 Bla. Com. 205 to 208. 1 East, P. C. 392 to 403.

(x) See precedent Rast. Ent. 487. West, 336. and against the principal and abettors in the same indictment. Trem. P. C. 33.

Mayhems, perhaps with this exception, adjudged the offender to suffer the same injury with that which he had inflicted, on the principle of the *lex talionis* of Moses. 3 Inst. 118. But this practice has been long exploded ; and nothing but fine and imprisonment is left by the common law as a penalty for an offence so barbarous.—We pass on therefore to consider

## II. MAIMING ON STATUTES.

The first statute on this subject is the 5 Hen. IV. c. 5. The offence. and relates to the cutting out of tongue and eyes, which was sometimes\* done, to prevent parties otherwise injured from giving evidence against those who had ill used them. It provides that “ in such case the offenders that so cut out tongues, or put out the eyes of any, and if it be duly proved and found that such deed was done of malice *prepense*, shall incur the pain of felony.” The 37 Hen. VIII. c. 6. enacts, that whoever shall maliciously, unlawfully and wittingly cut or cause to be cut off the ears of any one of the king’s subjects, otherwise than by authority of law, chance medley, sudden affray or adventure, shall forfeit treble damages to the party grieved by action of trespass, and ten pounds to the king as a fine. But the most important and extensive ancient statute on this subject is the 22 and 23 Car. II. c. 1. commonly called the Coventry Act, from the circumstances to which it owes its origin. For it was passed in consequence of some armed men having lain in wait for Sir John Coventry, a man of rank and consequence of the time, and having slit his nose, and so wounded him that he was not only disfigured, but his life brought into great danger. 1 Leach, 261. After reciting this transaction the statute proceeds to enact, “ That if any person shall, on purpose, and of malice aforethought, and by laying in wait, unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off a nose or lip, or cut off or disable any limb or member of any subject of his majesty, with intention in so doing to maim or disfigure, in any of the manners above mentioned, such his majesty’s subject, that then the person so offending his counsellors, aiders and abettors, (knowing of, and privy to the offence aforesaid) shall be guilty of felony without benefit of clergy.” To constitute the offence against which this provision was directed, there must be a maiming—a lying in wait—and an intent to disfigure. [\*785]

I. There must be a *maiming*, and for this purpose a wound in the throat or on the neck will not suffice to bring the offender within the statute, 1 Leach, 51. But to constitute a slitting the nose, it is not necessary that the nostrils should be perforated, for a wound across the upper part of the nose

on a level with the eyes, if it cuts the flesh, and divides the frontal vessels of the forehead, will fix the party by whom it was given with the guilt of a capital felony, 1 Leach, 55. 6 Harg. St. Tr. 223.

II. There must a be *lying in wait*. But it is not necessary that the prisoner should lurk in any particular place, and effect the mischief by suddenly rushing from it. It will suffice if, having formed an intention to maim, he takes a convenient opportunity of effecting his purpose, 1 Leach, 259. And, therefore, where the party injured was surrounded by a gang of thieves, and, in the scuffle, some of the party asked the rest  
 [\*786] where their knives were,\* on which the defendant struck at and maimed him, it was left to the jury to determine whether he had deliberate intention to wound, and they found him guilty. 1 Leach, 259. So where the prisoner was in concert with pick-pockets, to cut or stab those who should oppose them, and, in prosecution of this intention, he ran to a person who had apprehended one of his associates, and maimed him with a knife, this was holden to be a lying in wait within the statute, 1 Leach, 57, n. (a) 1 East, P. C. 397, 8. Where, however, the injury arises out of a sudden attack, though the prisoner is engaged in an unlawful purpose, the offence will not be capital. This was held where the defendant was stealing turnips, and on being accosted by a servant of the owner, struck him with an instrument of iron and wood, which he had with him, 1 Leach, 187. And where the commander of a press-gang wounded a person in the attempt to impress him, who resisted, not being liable to be taken, though antecedent malice was proved, it was held that a sufficient lying in wait had not been shown. 1 East, P. C. 399. These cases show the different construction put on the common and statute law, for, in any of these cases, had death ensued, malice would have been implied, and the parties convicted of murder. See ante 727.

III. There must be an *intent to disfigure*. But if the design was to murder *by maiming*, and the party, though wounded, recovers, this deeper guilt will be no excuse, for the primary intent to maim will not be merged in the ultimate design to kill, 6 Harg. St. Tr. 211. And the question of intent is matter of fact for the consideration of the jury, and not a point of law for the decision of the judge, id. ibid. It is not necessary that the intention to maim should be directed against any particular individual; for if it be general against any person who may resist an unlawful purpose, the offender will be liable, though the party injured be a stranger. 1 Leach, 55. 1 East, P. C. 396.—But most of the nice constructions which have been put on the statute of Charles are now become unimportant, for the 43 Geo. III. c. 58. enacts,



“ that any person stabbing or cutting another with intent to murder, rob, maim, disfigure or disable him, or to do him some other bodily harm, or to oppose his own apprehension, or the lawful taking of an accomplice, shall be guilty of felony without benefit of clergy.” See post 788. &c. where this act is recited at large.

*Indictment.*—Every indictment for maiming, though at common law, must charge the offence to have been done *feloniously*, because though the defendant was formerly punished with loss of member, Hawk. b. 2. c. 23. s. 18. The term *maheimavit* was always essential formerly, as the word *maim* is at present, id. s. 17. The\* wound should be set forth with the same degree of precision as in cases of murder, id. s. 79. and a similar conclusion must be drawn, that so the defendant did *feloniously maim*, &c. though this will not supply the omission of either of these words in the previous description of the violence, 1 East, P. C. 402. In case of indictment on the statute of Charles, its language must be accurately followed; so that the expressions *on purpose, of malice aforethought, and by lying in wait*, as well as the allegation that the act was done *with intent to maim and disfigure*, are material, id. *ibid.* As to the proceedings by appeal, the defence, and the mode of trial, when that course is taken. See Hawk. b. 2. c. 23. s. 15 to 27. and 1 East, P. C. 402, 3. but the subject is not of sufficient practical importance at the present day, to require further discussion here. Indictment. [\*787]

## INDICTMENT FOR SLITTING NOSE ON COVENTRY ACT.

That J. W. late of, &c. labourer, and A. C. late of, &c. esquire, on, &c. contriving and intending one E. C. then and yet being a subject of our said lord the king, to maim and disfigure (*b*) at, &c. with force and arms, in and upon the said E. C. in the peace of God and our said lord the king, then and there being, on purpose (*c*) an on, (or “of their”) malice forethought, (*d*) and by lying in wait unlawfully and feloniously (*e*) did make an assault, and the said J. W. with Indictment on Coventry Act, 22 and 23 Car. 2. c. 1. For felony, by slitting a nose, and against the aider and abettor. (a)

(a) From Cro. C. C. 264. See the indictment on which Carroll and King were convicted, Cro. C. A. 219, and the proceedings, 1 Leach, 55. See also an abstract of the indictments against Mills, 1 Leach, 259, and the Latin indictment against Coke and Woodbourne. 6 Harg. St. Tr. Append. 60. and see in indict-

*Crim. Law.*

ments under 4 Hen. 5. c. 5. for beating out eyes, and cutting out the tongue, West. 103, 4.

(b) This is necessary, 1 East, P. C. 402. ante 786, 7.

(c d) These words are material, 1 East, P. C. 402. supra 787.

(e) This is requisite, Hawk. b. 2. c. 23. s. 18. ante 786, 7.

[\*788] a certain iron bill of the value of one penny, which he the said J. W. in his right hand then and there had and held (*f*) the nose of the said E. C. on purpose, and of his malice forethought, and by lying in wait, then and there unlawfully and feloniously did slit, with intention, the said E. C. in so doing, in manner aforesaid, to maim and disfigure, (*g*) and that the aforesaid\* A. C. at the time the aforesaid felony by the said J. W. in manner and form aforesaid, was done and committed, to wit, on the said, &c. at, &c. with force and arms, on purpose, and of his malice forethought, and by lying in wait unlawfully, and feloniously was present, (knowing of and privy to the said felony) (*h*) aiding and abetting the said J. W. in the felony aforesaid, in manner and form aforesaid done and committed. And so the jurors, &c. do say (*i*) that the said J. W. and A. C. on the said, &c. at, &c. aforesaid, with force and arms, on purpose and of their malice forethought, and by lying in wait, the felony aforesaid, in form aforesaid, unlawfully and feloniously did do and commit, and each of them did do and commit, against the peace, &c. and against the form, &c.

### INDICTMENTS FOR MALICIOUSLY CUTTING, ON 43 GEO. III. C. 38.

On 43 Geo  
III. c. 58.  
s. 1. for  
malicious-  
ly cutting  
the prose-  
cutor. (*k*)

That C. H. late of, &c. on, &c. with force and arms, at, &c. in and upon one C. R. a subject of our said lord the

(*f*) The same precision necessary as in murder. Hawk. b. 2. c. 23. s. 79.

(*g*) Vide supra.

(*h*) The words of the statute.

(*i*) This conclusion is necessary, 1 East, P. C. 402. ante 786, 7.

(*k*) See other precedents, Cro. C. C. 266. and the precedents and notes relative to obstruction of public justice, ante 154, 157. The 43 Geo. III. c. 58. s. 1 enacts, that if any person or persons shall, either in England or Ireland, wilfully, maliciously and unlawfully shoot at any of his majesty's subjects; or shall wilfully, maliciously and unlawfully present, point or level any kind of loaded fire arms at any of his majesty's subjects, and attempt by drawing a trigger, or in any other manner, to dis-

charge the same at or against his or their person or persons, or shall wilfully, maliciously and unlawfully stab or cut any of his majesty's subjects, with intent in so doing, or by means thereof, to murder or rob, or to maim, disfigure or disable such his majesty's subject or subjects, or with intent to do some other grievous bodily harm to such his majesty's subject or subjects, or with intent to obstruct, resist or prevent the lawful apprehension and detainer of the person or persons so stabbing or cutting, or the lawful apprehension and detainer of any of his, her or their accomplices, for any offences for which he, she or they may respectively be liable by law to be apprehended, imprisoned or detained,—or shall wilfully, ma-

king, then and there\* being, feloniously wilfully, maliciously and unlawfully did make an assault, and with a certain sharp instrument, then and there feloniously, wilfully, maliciously and unlawfully did strike and cut the said C. R. in and upon the right arm of her the said C. R. with intent in so doing wilfully and of his malice aforethought, to kill and murder her the said C. R. to the great damage of the said C. R. against the form, &c. and against the peace, &c. [Second Count same as the first, only instead of stating the intent to murder, aver it to be "to disable her the said C. R." and conclude as before. Third count similar to the first, only stating the intent to be "to do some grievous bodily harm to the said C. R."]

[\*789]

Second count.

Third count.

That J. M. late of, &c. H. M. late of, &c. T. M. late of, &c. on, &c. with force and arms, at, &c. with a certain pistol loaded with gunpowder and divers, to wit, six leaden slugs, feloniously, wilfully, maliciously and unlawfully, did shoot at one J. M., then and there being a subject of our said lord the king, and in the peace of God and our said lord the king then and there being, and with divers sharp and offensive weapons, to wit, with a certain sword, and with a certain hedging hook, him the said J. M. then and there being such subject as aforesaid, they the said J. M. H. M. and T. M. then and there feloniously, wilfully, maliciously

For maliciously shooting at and cutting under 43 Geo. III. c. 58. s. 1. (i)

liciously and unlawfully administer to, or cause to be administered to, or taken by any of his majesty's subjects, any deadly poison, or other noxious and destructive substance or thing, with intent such his majesty's subject or subjects thereby to murder, or thereby to cause and procure the miscarriage of any woman then being quick with child (†) or shall wilfully, maliciously and unlawfully set fire to any house, barn, granary, hop oast, malt house, stable, coach house, out house, mill, warehouse or shop, whether such house, barn, &c. shall then be in the possession of the person or persons so setting fire to the same, or in the possession of any other person or persons, or of any body corporate, with intent thereby to injure or defraud his majesty or any of his majesty's subjects, or any body corporate, that then and in every such case the person or persons so offending, their counsellors, aiders and abettors, knowing of and privy to

such offence, shall be and are declared felons, without benefit of clergy. But it is provided that in the case of shooting or stabbing, if under the circumstances, had the party been killed, it would not have been murder at common law, the defendants shall be acquitted. Under this act, a striking over the face with the sharp end of a hammer, is held a sufficient cutting, though had the blunt end been employed, the defendant would have been guilty of a misdemeanour only. 4 Bla. Com. 208. Christ. ed. in notes. On the clause which makes it felony to cut, in order to obstruct the apprehension of an offender, it has been holden, that if the party was seized without notice of the occasion, and cut the officer, he ought not to be convicted, because, had he killed him, it would have been manslaughter only. 3 Campb. 68. See precedent, ante 154, 157.

(i) See a form in 2 Starkie, 558.

† See provisions post in cases where the woman was not quick with child,

Second  
count.  
[\*790]

Third  
count.

Fourth  
count.

Fifth  
count.

Sixth  
count.

Seventh  
count.

Eighth  
count.

and unlawfully, did cut with intent in so doing, that is to say, in so shooting at and cutting the said J. M., and by means thereof, feloniously, wilfully and of their malice aforethought to murder him the said J. M., then and there being such subject as aforesaid, against the form, &c. and against the peace,\* &c. And the jurors, &c. that the said J. M., &c. on, &c. with force and arms, at, &c. with a certain pistol loaded with gunpowder, and divers, to wit, six leaden slugs, feloniously, wilfully, maliciously and unlawfully, did shoot at the said J. M., then and there being such subject as aforesaid, &c. [*as in the first count.*] with intent in so doing, that is to say, in so shooting at and cutting the said J. M., and by means thereof to maim and disable him the said J. M. then and there being such subject as aforesaid, against the form of the statute, &c. and against the peace, &c. The like with intent in so doing, to wit, in so shooting at and cutting the said J. M., and by means thereof to do some grievous bodily harm to him the said J. M., then and there being such subject as aforesaid, against the form, &c. And the jurors, &c. that the said J. M., H. M. and T. M. on the said eighteenth day of April, in the fifty second year aforesaid, with force and arms, at, &c. with a certain pistol loaded with gunpowder, and divers, to wit, six leaden slugs, feloniously, wilfully, maliciously and unlawfully, did shoot at the said J. M. then and there being such subject as aforesaid, and in the peace, &c. then and there being, with intent in so doing, and by means thereof then and there feloniously, wilfully and of their malice aforethought to murder him the said J. M., then and there being such subject as aforesaid, against the form of the statute, &c. and against the peace, &c. The like with intent in so doing, and by means thereof, to maim and disable him the said J. M. then and there being such subject as aforesaid, against the form, &c. The like with intent in so doing and by means thereof to do some grievous bodily harm to him the said J. M., then and there being such subject as aforesaid, against the form, &c. And the jurors, &c. that the said J. M., H. M. and T. M., on, &c. with force and arms, at, &c. with divers sharp and offensive weapons, to wit, with a certain sword, and a certain hedging-hook, feloniously, wilfully, maliciously and unlawfully, did cut the said J. M., then and there being, such subject as aforesaid, and in the peace, &c. then and there being, with intent in so doing, and by means thereof then and there feloniously, wilfully and of their malice aforethought, to murder him the said J. M., then and there being such subject as aforesaid, against the form, &c. The like with intent in so doing, and by means thereof, to maim and disable him the said J. M., then and there being such subject as aforesaid,

against the form, &c. The like with intent in so doing, and by means thereof, to do some grievous bodily harm to him the said J. M., then and there being such subject as aforesaid, against the form, &c. And the jurors, &c. that the said J. M., &c. afterwards, to wit, on, &c. with force and arms, at, &c. with a certain pistol loaded with gunpowder, and divers,\* to wit, six leaden slugs, feloniously, wilfully, maliciously and unlawfully, and knowingly did shoot at the said J. M., the said J. M. then and there being in his own dwelling house, situate and being at, &c. against the form of the statute, &c. and against the peace, &c. And the jurors, &c. that the said J. M., &c. afterwards, to wit, on, &c. with force and arms, at, &c. with a certain pistol loaded with gundowder, and divers, to wit, six leaden slugs, feloniously, wilfully, maliciously and unlawfully, did shoot at the said J. M., against the form, &c.

Ninth count.

Tenth count,

[\*791]

Eleventh count.

That J. S. late of, &c. W. G. late of, &c. and J. L. late of, &c. being evil designing and disorderly persons, and of wicked and malicious minds and dispositions, and not regarding the

For shooting at the prosecutor in a dwelling house, viz.

(k) This indictment is taken from Cro. C. A. 20. See the indictment in Latin against Arnold, the year after the act was passed, for shooting at Lord Onslow, 8 Harg. St. Tr. 289. The indictment in the Coal-heaver's case, stating that all shot jointly, which was held good, 1 Leach, 64. And see other precedents, Cro. C. A. 474. Cro. C. C. 84, 267. Starkie 400, 1.

*Offence.* Among the provisions of 9 Geo. I. c. 22. it is enacted, that if any person shall wilfully and maliciously shoot at any person in any dwelling-house or other place, he shall be guilty of felony without benefit of clergy. And any one who shall forcibly rescue another, lawfully in the custody of any officer or other person, for any of the offences there enumerated, or shall by gift or promise of money or other reward, procure any of his majesty's subjects to join him in any of them, is made guilty in the same degree. To bring an offender within this provision, it is not necessary that he should be disguised, &c. for the words relating to deer stealers, in the former part of the section, "persons armed, &c. and having their faces blacked or otherwise disguised," have no reference to the subsequent clauses. 8 Harg. St. Tr.

313. But to make a shooting capital within this act, there must be such a malice either express or implied, as in case the party had been killed would have constituted murder; and no shooting by accident or self defence, or in such passion as would reduce the killing to manslaughter, will render a party thus highly criminal, 1 Leach, 417. And though it is not necessary that any evil consequences should ensue, yet the shooting must be with a gun so loaded as to be dangerous, and it must be levelled at the party whom it was intended to injure. So that if the firing take place in the dark, although it was designed to reach an individual, if directed to a quarter different from that in which he was at the time the prisoner must be acquitted. 1 East P. C. 413. All present, aiding and abetting a malicious shooting, which comes within the act are principals. And they may all be indicted for shooting, though some of them had no fire arms, and will be convicted, though the party who actually shot, is uncertain, 1 Leach, 64; for it is said that as the act creates a new felony and does not take away clergy from any offence in which it was formerly allowed, the crime must necessarily possess all the incidents of felony at common

against the person who shot, and two others for aiding and abetting, &c. on 9 Geo. I. c. 22. (k)

First count stating an assault by all the parties, that J. S. shot, and two others aided, &c. in a dwelling house.

laws and statutes of this realm, nor fearing the pains and penalties therein contained, after the first day of June, in the year of our Lord, seventeen hundred and twenty-three, to wit, on, &c. with force and arms, at, &c. in and upon one J. P. esquire, in the peace of God and our said lord the king, in a certain dwelling house there situate, then and there being, unlawfully, wilfully, maliciously and feloniously, did make an assault, and that the said J. S. with force and arms, at, &c. aforesaid, with a certain gun which he the said J. S. in both his hands then and there had and held, and which said gun was then and there loaded with gunpowder and divers leaden bullets, to wit, three leaden bullets, did then and there, in the said dwelling house, feloniously, wilfully and maliciously, shoot at the said J. P., he the said J. P. then and there being in the said dwelling house, and that the said W. G. and J. L. at the time of the felony aforesaid, by him the said J. S. in form aforesaid, done and committed, were then and there present, aiding, abetting, assisting, comforting and maintaining the said J. S., the felony aforesaid, in manner and form aforesaid, to do, commit and perpetrate, against the form of the statute, &c. and against the peace, &c. [*Second count like the first only\* leaving out the words, "in the dwelling house," &c. and stating an assault in the parish at large.*] And the jurors afore-

Third count, stating that all the parties shot at the prosecutor in a dwelling house.

[#793]

law; but this doctrine is ably questioned by Mr. Justice Foster, Fost. 416 to 430. It has, however, been since confirmed by two express decisions. 1 Leach 359. 1 East P. C. 414. 3 T. R. 105. And though the offence be laid jointly, it is joint and several in its nature, and therefore, some of the defendants may be acquitted and others found guilty id. ibid.

*Indictment.* The indictment must pursue the words of the statute and charge the offence to have been "wilfully and maliciously," as well as *feloniously* committed; for where it was charged to have been done "unlawfully, maliciously and feloniously," omitting the word *wilfully*, the statement was holden to be defective. 1 East P. C. 414. It does not seem to be necessary to lay the fact to have been committed in any dwelling house, as the words of the act are "in any dwelling house or other place," but if it be stated, and the name of the owner of the house be set forth, and a mistake arises, the variance has been holden fatal. 1

Leach, 352.; but where the name is stated, and it cannot be proved who is the owner, or what his real name is, no objection can be taken 1 Leach, 352. in notes. Where several are indicted and it is uncertain which of them shot, it is best to charge the shooting by one of them, and that the others abetted him in the felony, for though it is said that it may be charged as the act of all yet it is necessary to state that the party held the gun in his hands and to aver that several did so at once appears absurd. And, as in case of murder, it would probably be holden that it is immaterial whether the proof accords with the allegation as to the individual firing; for all that are present are equally guilty. The venue may be laid in any county of England at the prosecutor's discretion; but this liberty must not be abused to purposes of injustice, 9 Geo. I. c. 22. s. 14. 1. Bla. Rep. 415. ante 1 vol. 184. The punishment is death without benefit of clergy. But no attainder works corruption of blood, forfeiture or loss of dower.



said, upon their oath aforesaid, do further present, that the said J. S., W. G. and J. L. on the said, &c. with force and arms, at, &c. aforesaid, with a certain other gun loaded with gunpowder and divers leaden bullets, to wit, three leaden bullets, feloniously, wilfully and maliciously did shoot at the said J. P. he the said J. P. then and there being in the peace of God, and our said lord the king, and also then and there being in a certain dwelling house, situate in, &c. aforesaid, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said J. S. being an ill-designing person, of a wicked and malicious disposition, and not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, to wit, on the said, &c. with force and arms, at, &c. with a certain other gun, loaded with gunpowder and divers leaden bullets, to wit, three leaden bullets, which said gun he the said J. S. in both his hands then and there had and held, feloniously, wilfully and maliciously, did shoot at the said J. P. he the said J. P. then and there being in the peace of God, and our said lord the king, and also then and there being in a certain dwelling house, situate in, &c. aforesaid, against the form of the statute, &c. and against the peace, &c. And that the said W. G. and J. L. being also ill-designing persons, and of wicked and malicious dispositions at the time the said felony last mentioned was committed by the said J. S. in manner and form aforesaid, to wit, on the said, &c. with force and arms, at, &c. aforesaid, unlawfully, wilfully, maliciously and feloniously were present, aiding, abetting, helping, comforting, assisting and maintaining the said J. S. the felony last aforesaid, in manner and form aforesaid, to do and commit. And so the jurors, &c. do say, that the said J. S., W. G. and J. L. on the said, &c. at, &c. aforesaid, with force and arms, the felony last aforesaid, in manner and form aforesaid, unlawfully, wilfully, maliciously and feloniously, did do and commit, and each of them did do and commit, against the form of the statute, &c. and against the peace, &c.

That J. S. late of, &c. being an ill-designing and disorderly person, of a wicked and malicious disposition, and not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, after the first day of June, which was in the year of our Lord one thousand seven hundred and twenty-three, to wit, on, &c. with force and arms, at, &c. aforesaid, with a certain pistol,\* loaded with gunpowder and a leaden slug, which he the said J. S. in his right hand then

Fourth count, stating that J. S. shot at the prosecutor in a dwelling house, and that the two others aided, &c.

For shooting at the prosecutor with a pistol, laying the offence in two counts on 9 Geo. I. c. 22.

(1) [\*794] First count for shooting

with a pistol loaded with gunpowder and a leaden shot. Second count for shooting without stating the pistol to be charged.

Indictment for maliciously shooting a person in his dwelling house. (m)

For maliciously shooting in Fleet street. (n)

and there had and held, he the said J. S. did then and there, unlawfully, wilfully, maliciously and feloniously, shoot at one W. M. (he the said W. M. in the peace of God and our said lord the king then and there being,) against the form, &c. and against the peace, &c. And the jurors, &c. that the said J. S. after the said, &c. to wit, on the said, &c. with force and arms, at, &c. aforesaid, with a certain pistol, which he the said J. S. in his right hand then and there had and held, he the said J. S. did then and there, wilfully, wickedly, maliciously, and feloniously shoot at one W. M. (he the said W. M. in the peace of God and our said lord the king, and in the king's highway then and there being,) against the form, &c. and against the peace, &c.

That A. N. late of, &c. being an ill-designing, &c. and not regarding, &c. after, &c. to wit, on, &c. with force and arms at, &c. aforesaid, with a certain gun, loaded with gunpowder and a leaden bullet, which he the said A. N. then and there had and held, he the said A. N. with the said gun, so being loaded as aforesaid, did then and there wilfully, maliciously, unlawfully, knowingly and feloniously shoot at A. D. esquire, (the said A. D. then and there being in his own dwelling house) against the form, &c. to the evil example, &c. and against the peace, &c.

[*Like the last precedent, only stating instead of the words in parenthesis, "he the said A. D. then and there being in a certain place and king's highway called Fleet Street, in &c. aforesaid."*]

## INDICTMENTS FOR MALICIOUSLY SHOOTING. ON 43 GEO. III. c. 58.

Upon 43 Geo. III. c. 58. s. 1. for shooting at; prosecutor. (o)

[\*795]

The jurors, &c. that M. Y. late of, &c. spinster, on, &c. with force and arms, &c. with a certain gun then and there loaded with gunpowder and divers leaden shot, which she the said M. G. in both her hands then and there had and held, feloniously, wilfully, maliciously and unlawfully did shoot at R. C. a subject of our said lord the king, in the peace of God and our said lord the king then and there being, *with intent in so doing, him the said R. C. then and there* feloniously, wilfully, and of her malice aforethought to kill and murder, against the form, &c. and against the peace, &c. Second\* Count. The same, only stating it to have been

(m) Cro. C. C. 7. Ed. 220. 3 Ed. 267.

(n) Cro. C. C. 3 Ed. 267.

(o) See other precedents. Cro. C. C. 8 Ed. 267. Starkie, 558.

done "with intent to disable the said R. C." Third Count. "With intent to do him some grievous bodily harm." Fourth Count. The same as the first, leaving out the words in italic.

That J. C. late of, &c. J. D. late of, &c. and E. T. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in and upon T. C. a subject of our said lord the king, in the peace of God and our said lord the king then and there being, feloniously, wilfully, maliciously and unlawfully, did make an assault, and with a certain sharp instrument, then and there feloniously, wilfully, maliciously and unlawfully did strike and cut the said T. C. in and upon the back of him the said T. C. with intent in so doing, feloniously, wilfully, and of their malice aforethought to kill and murder him the said T. C. to the great damage of the said T. C. against the form of the statute, &c. and against the peace, &c. the king his crown and dignity. And the jurors, &c. do further present, that J. N. late of, &c. before the said felony was committed, in manner and form aforesaid, to wit, on the same day and year aforesaid, with force and arms, at the parish aforesaid, in the county aforesaid, *feloniously*, wilfully, maliciously and unlawfully, did *counsel, aid and abet* them, the said J. C., J. D. and E. T., the felony aforesaid, in manner and form aforesaid, to do and commit, and then and there, to wit, at the time of the committing the felony aforesaid, *knew of*, and was privy to the said offence, against the form of the statute, &c. against the peace, &c. [*Second Count like the first, only laying the intent, "in so doing to disable him the said T. C." Third Count like the first, only saying that the three defendants, "with a certain knife, feloniously, &c. did stab and cut," and laying the intent, "in so doing to do some grievous bodily harm to him the said T. C."*]

Indictment on 43 Geo. III. c. 58, for an assault with intent to murder, &c. against three persons for assault and cutting, &c. and against a fourth for counselling, procuring, &c. (p)

That R. S. late of, &c. after the first day of July, in the year of our lord one thousand eight hundred and three, to wit, on, &c. with force and arms, at, &c. aforesaid, did wilfully, maliciously, unlawfully and feloniously present, level and point a certain gun, &c. at J. F., then and there being a subject of our said lord the king, and in the peace of God and our said lord the king, and the said R. S. did then and there, with force and arms, wilfully, maliciously, unlawfully and feloniously attempt by then and there drawing the trigger of the said gun, so being there loaded, and so presented, pointed, and levelled as aforesaid, to discharge the same against the person of the said J. F., with intent in so doing, and by means thereof,\* to do his said majesty's subject some grievous bodily harm, against the peace, &c. and against the form, &c. [*There were several other Counts.*]

On 43. Geo. III. c. 58. s. 1. For leveling a gun at prosecutor.

[\*796]

(p) On this indictment the defendants were convicted and executed. This was drawn by an eminent crown lawyer.

## INDICTMENTS FOR ATTEMPTS TO MURDER BY POISON.

At common law against a servant for a misdemeanour in putting a large quantity of corrosive mercury sublimate into a tea-kettle of water with an intent to poison her master. (g)

That A. G. late of, &c. being a person of a wicked mind and disposition, and maliciously intending to poison one J. M. of, &c. aforesaid, apothecary, her master, on, &c. did knowingly, wilfully and maliciously, put a large quantity of corrosive mercury sublimate, (being a deadly poison) into a tea-kettle filled with water, which water, he the said J. M. had then and there immediately before directed the said A. to boil, in order to make a certain liquor called tea, for his own drinking; and she the said A. did then and there knowingly, wilfully and maliciously, boil the said corrosive mercury sublimate in the said water, and the said water, in which the said corrosive mercury sublimate was so boiled, as aforesaid, did immediately afterwards, to wit, on, &c. aforesaid, there deliver to the said J. M., her said master, to use for the making of the said liquor called tea, and the said J. M. not knowing the said corrosive mercury sublimate to have been in the said water, did use the same in making the said liquor called tea, and did drink a quantity of the same made with the said water, wherein the said corrosive mercury sublimate was so boiled, as aforesaid, whereby the said J. M. became, and was grievously and violently distempered and injured in his body, and in extreme danger of losing his life, to the great damage of the said J. M. to the evil example, &c. and against the peace, &c.

For a misdemeanour at common law in putting white arsenic into brandy and giving it to a person to drink. (r)

[\*797]

That T. B. late of, &c. E. S. late of, &c. and R. S. late of, &c. contriving and intending to hurt and damage the body of A. O. widow, on, &c. with force and arms, at, &c. aforesaid, unlawfully, wickedly and knowingly, did mix poison, to wit, white arsenic, with brandy, and the same poison mixed with brandy, as aforesaid, afterwards, to wit, on the same day and year above mentioned, with force and arms, at, &c. aforesaid, unlawfully and knowingly, did give to the said A. to drink, and the said A. not knowing the said poison to have been mixed with the brandy as aforesaid, she the said A. did then and there drink and swallow the poison mixed with the brandy as aforesaid, by which the said A. of the poison aforesaid, then and continually afterwards, until the day of taking this inquisition,\* at, &c. aforesaid, was and yet is grievously and violently distempered and injured in her body, to the great damage of the said A. and against the peace, &c.

(g) Cro. C. C. 7 Ed. 646.

(r) See Cro. C. C. 7 Ed. 648.

That A. B. late of, &c. on, &c. at, &c. wilfully, maliciously, and unlawfully, did mix deadly poison; to wit, one ounce of white arsenic with brandy, and the same poison mixed with brandy as aforesaid, afterwards, to wit, on the same day and year above mentioned, with force and arms, at, &c. aforesaid, feloniously, wilfully, maliciously, and unlawfully, did administer to, and cause the same to be taken by one C. D. with intent in so doing, feloniously, wilfully, and of his malice aforethought, to poison, kill and murder, against the form of the statute, &c. and against the peace, &c. [*Second count like the first, only describing the arsenic as a noxious and destructive substance.*]

For felony in an attempt to poison on 43 Geo. III. c. 58. s. 1. (s)

### INDICTMENTS FOR GIVING DRUGS, &c. TO PRODUCE ABORTION.

That A. B. late of &c. on, &c. and on divers other days and times between that day and, &c. with force and arms, at, &c. wilfully, maliciously, and feloniously, did administer to, and cause to be administered to, and taken by one C. D. single woman, then and there being, and on the said other days and times aforesaid, there continuing to be quick with child, divers large quantities, to wit, four ounces of a noxious and destructive substance, to wit, savin, (u) with intent thereby to cause and procure the miscarriage of the said C. D. against the form, &c. and against the peace, &c.

For administering savin to a woman quick with child, with intent to procure abortion, on 43 Geo. III. c. 58. s. 1. (t)

That T. G. late of, &c. on, &c. and on divers other days and times, between that day and, &c. aforesaid, with force and arms, at, &c. wilfully, maliciously, and feloniously, did administer to, and cause to be administered to and taken by R. E. F. single woman, divers\* large quantities, that is to say, &c.—of a certain drug child savin, the said R. E. F. on the said, &c. and continually from thence, until, &c. being with child, but not being quick with child, to wit, at the re-

Upon 43 Geo. III. c. 58. s. 2, for administering savin to a woman not quick with child, with intent to procure a miscarriage. (w) [\*798]

(s) See similar precedent, Starkie, 636, and see the statute set forth ante 788. n. k.

(t) See ante 788. n. k. for similar precedent, Starkie, 560. For indictments on 2nd section of the act where the child was not alive, for single felony, and at common law, for a misdemeanour, see post 798, 9.

(u) The name of the poison is not material, see 3 Camp. 75.

(w) See other precedents, Cro. C. C. 266. 2 Stark. 560. As under

the first section of the act, to administer drugs to a woman quick with child is felony without benefit of clergy, so by the second section to do so before the child is alive, is made a single felony in principals, aiders and procurers, and punished with fine, imprisonment, pillory, whipping or transportation, for any term not exceeding fourteen years, at the discretion of the court in which they were convicted.

Second  
count.

spective times of administering such divers large quantities of the said drug called savin, as aforesaid, with intent thereby to cause and procure the miscarriage of the said R. E. F. against the form, &c. and against the peace, &c. And the jurors, &c. that the said T. G. afterwards, to wit, on the said, &c. with force and arms, at, &c. wilfully, maliciously, and feloniously, did administer to, and cause to be administered to, and taken by the said R. E. F. a woman then with child, divers other large quantities of a certain drug called savin, that is to say, &c.—of the said drug called savin, with intent thereby to cause and procure the miscarriage of the said R. E. F. she the said R. E. F. not being quick with child at the time of administering such last mentioned divers large quantities of the said drug called savin, as last aforesaid, against the form, &c. and against the peace, &c. And the jurors, &c. that the said T. G. afterwards, to wit, on the said, &c. with force and arms, at, &c. wilfully, maliciously, and feloniously, did administer to, and cause to be administered to, and taken by the said R. E. F. divers other large quantities of a certain drug called savin, that is to say, &c. of the said drug called savin, with intent thereby to cause and procure the miscarriage of the said R. E. F. she the said R. E. F. not being quick with child, at the time of administering such last mentioned large quantities of the said drug called savin, as last aforesaid, against the form, &c. and against the peace, &c.

Third  
count.

On 43 Geo.  
III. c. 58.  
s. 2. for  
adminis-  
tering de-  
coction of  
savin to  
procure  
abortion,  
to a wo-  
man be-  
fore the  
quicken-  
ing. (x)

That A. B. late of, &c. on, &c. and on divers other days and times between that day, and, &c. at, &c. wilfully, maliciously, unlawfully and feloniously, did administer to, and cause to be administered to, and taken by one H. M. G. single woman, divers large quantities, that is to say, six ounces of the decoction of a certain shrub called savin, then and there being a noxious and destructive thing, the said H. M. G. on the said, &c. and continually from thence until the said, &c. at, &c. aforesaid, being with child, but not quick with child, to wit, at the respective times of administering such divers large quantities of the decoction of the said shrub called savin, as aforesaid, with intent thereby to cause and procure the miscarriage of the said H. M. G. against the form of the statute, &c.

At com-  
mon law  
for an as-  
sault and  
adminis-  
tering, &c.  
to cause a  
miscar-  
riage. (y)

That E. F. late of, &c. being a wicked, malicious, and evil disposed person, and not having the fear of God before his eyes, but being\* moved and seduced by the instigation of the devil, on the twenty-eighth day of February, in the thirty-ninth year of our sovereign lord George the third, then king of Great Britain, &c. and now, to wit, at the time of taking

[\*799]

(x) 3 Campb. 75.

(y) From Crown Office Mich.

T. 42 Geo. III.



this inquisition, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, with force and arms, at, &c. aforesaid, in and upon one A. E. the wife of F. E. in the peace of God and our said lord the king, then and there being, and also then and there being big and pregnant with child, did make a violent assault, and that he the said E. F. then and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, knowingly, unlawfully, wilfully, wickedly, maliciously and injuriously, did give and administer, and cause and procure to be given and administered to the said A. E., so being big and pregnant with child as aforesaid, divers deadly, dangerous, unwholesome and pernicious pills, herbs, drugs, potions and mixtures, with intent feloniously, wilfully, and of his the said E. F's. malice aforethought, to kill and murder the said child, with which the said A. E. was so then big and pregnant as aforesaid, by reason and means whereof, not only the said child, whereof she, the said A. E. was afterwards delivered, and which, by the providence of God was born alive, became and was rendered weak, sick, diseased and distempered in body, but also the said A. E. as well before as at the time of her said delivery, and for a long time, (to wit,) for the space of six months then next following, became and was rendered weak, sick, diseased and distempered in body, and during all that time, underwent and suffered great and excruciating pains, anguish and torture, both of body and mind, and other wrongs to the said Anne, he, the said E. F. then and there unlawfully, wilfully, wickedly, maliciously and injuriously did, to the grievous damage of the said A. E., and against the peace of, &c. And the jurors, &c. do further present, that the said E. F. afterwards, (to wit,) on the said, &c. with force and arms, at, &c. aforesaid, in and upon the said A. E. in the peace of God and our said lord the king then and there being, and also then and there being big and pregnant with a certain other child, did make another violent assault, and that he the said E. F. then and on divers other days and times, between that day and the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, knowingly, unlawfully, wilfully, wickedly, maliciously and injuriously, did give and administer, and cause and procure to be given and administered to the said A. E., so being big and pregnant with child as last aforesaid, divers other deadly, dangerous, unwholesome and pernicious pills, herbs, drugs, potions and mixtures,\* by reason and means whereof, &c. (*as before.*) And the jurors, &c. do further present that the said E. F. afterwards, (to wit,) on the said, &c. with force and arms, at, &c. aforesaid, in and upon the said A. E. in the

Second  
count.

[\*800]  
Third  
count.

Fourth  
count.

[\*801]

peace of God and our said lord the king then and there being, and also then and there being big and pregnant with a certain other child, did make another violent assault; and that he the said E. F. then and on divers other days and times between that day and the day of the taking of this inquisition, with force and arms, at, &c. aforesaid, knowingly, unlawfully, wilfully, wickedly, maliciously and injuriously, did give and administer, and cause and procure to be given and administered to the said A. E. so being big and pregnant with child as last aforesaid, divers other deadly, dangerous, unwholesome and pernicious pills, herbs, drugs, potions and mixtures, with a wicked intent to cause and procure the said A. E. to miscarry and to bring forth the said last mentioned child, with which she was so big and pregnant as last aforesaid, dead, by reason and means whereof, she the said A. E. became and was rendered weak, sick, diseased and distempered in body, and remained and continued so weak, sick, diseased and distempered in body for a long time, (to wit,) for the space of six months then next following, and during all the time last mentioned underwent and suffered great and excruciating pains, anguish and torture, both of body and mind, and other wrongs to the said A. E., he the said E. F. then and there unlawfully, wilfully, wickedly, maliciously and injuriously did, to the grievous damage of the said A. E. and against the peace, &c. And the jurors, &c. do further present, that the said E. F. afterwards, (to wit,) on, &c. at, &c. in and upon the said A. E. in the peace of God and our said lord the king, then and there being, and also then and there being big and pregnant with a certain other child, did make another violent assault, and her the said A. E. then and there did violently beat, bruise, wound and ill treat, so that her life was thereby greatly dispaired of, and then and there violently, wickedly and inhumanly, pinched and bruised the belly and private parts of the said A. E., and a certain instrument called a rule, which he the said E. F. in his right hand then and there had and held, up and into the womb and body of the said Anne, then and there violently, wickedly and inhumanly, did force and thrust with a wicked intent to cause and procure the said A. E. to miscarry and to bring forth the said child, of which she was so big and pregnant, as last aforesaid, dead, by reason and means of which last mentioned premises, she the said Anne became and was rendered weak, sick, sore, lame, diseased and disordered in body, and remained and continued so weak, sick, sore, lame, diseased and disordered in body, as last aforesaid,\* for a long time, (to wit,) for the space of six months then next following, and during all the time last aforesaid, underwent and suffered great and excruciating pains, anguish and torture, both of

body and mind, and other wrongs to the said A. E. he the said A. F. then and there unlawfully, wilfully, wickedly, maliciously and injuriously did, to the grievous damage of the said Anne, and against the peace of, &c. [5th count for common assault.]

Fifth  
count, for  
common  
assault,

## ROBBERY. (z)

### PRELIMINARY NOTES.

*Offence.\** Robbery is the felonious taking from the person of another, money or goods of any value, by putting in fear, 3 Inst. 68, 4 Bla. Com. 243. To constitute robbery, therefore, something must be taken. The theft must be from the person—and it must be effected by putting in fear—but the construction on these words requires examination.

The of-  
fence.  
[\*802]

1. *Something must be taken*, though the value is immaterial, 3 Inst. 68. An assault with intent to rob, was, indeed, formerly holden to be robbery on the principle, *voluntas reputatur pro facto*, but this maxim in every case, except treason, has been long since exploded, 3 Inst. 69. The attempt, which was anciently a misdemeanour, is now a clergyable felony by statute, as we shall see hereafter, 7 Geo. II. c. 21. To constitute a *taking*, the property must have passed into the possession of the offender, 3 Inst. 69. So that if a purse were fastened to the girdle of its owner which the thief cut, and the purse fell to the ground, this is no robbery; but if the robber once had the property in his hand, though it was immediately relinquished, the offence is complete. 3 Inst. 69. 1 Leach, 228. and therefore to snatch an ear-ring from a lady's ear, so that the ear is torn in the operation, is robbery, though it is dropped immediately into the hair, and is there found by the owner, 1 Leach, 321.

2. The taking must be *from the person*. But if the property be taken in the presence of the party, this will suffice; so that to take the horse standing near its owner, or to drive away his sheep or cattle before his face, after putting him in fear, is robbery, 3 Inst. 69. 4 Bla. Com. 243. And if a man take a purse, &c. which another, on being assaulted, has

(z) On this subject in general, 3 Inst. 68, 9. Hawk. b. 1. c. 34. 4 Bla. Com. 243, 4. Com. Dig. Justices A. 1, 2, 3. 2 East, P. C. 707 to 736. Burn J. Robbery. Williams, Felony II. Dick J. Robbery. This crime is sometimes classed under the

head of larceny, and might not improperly have been placed among offences to personal property; but as its distinguishing characteristic is the violence offered to the person, it has been thought better to place it here.

[\*803] thrown away through fear, or his hat which has fallen from his head, or his property from a servant\* in his presence, he will be considered as having taken it from the person. 3 Inst. 39. Hawk. b. 1. c. 34. s. 6.—But where thieves struck money out of the owner's hands, and, by menaces drove him off, so that he could not take it up, and then seized it themselves, a special verdict was found, not stating that it was taken up in the presence of the owner, the court would not intend it, and the prisoners were admitted to clergy. 2 Stra. 1015.

3. There must be a *violence and putting in fear*. This is the circumstance which distinguishes robbery from all other larcenies. But what degree of force must be used, and what kind of fears excited, are questions that have often been the subjects of discussion. It is certain that the goods must be taken *against the will* of the possessor; for if three persons agree to rob a fourth, in order to obtain the reward to be shared amongst them all, and the last consents to the scheme, it is impossible that any robbery can be committed, Fost. 123. (ante 1 vol. 2. n. b. and c.) But where a man, knowing a road to be infested with highwaymen, puts a little money in his pocket, and goes out for the purpose of detecting and securing them, and on being accosted, delivers his money, and then succeeds in apprehending the offender, the latter will be guilty of a robbery. Fost. 129. It seems that there must either be a putting in fear or an actual violence, though both need not be positively shown, for the former will be inferred from the latter, and the latter is sufficiently implied in the former. Thus were a man suddenly knocked down and his property taken, while he is senseless, there can be no room for terror, and yet it is evident that this is a robbery, 2 East, P. C. 711. So there may be robbery were no actual force is used, from the mere influence of terror. Thus it has been repeatedly decided, that to obtain money by threatening to accuse a party of an unnatural crime, though he is under no apprehensions for his life, is a robbery, 1 Leach 139, 193, 278. For as observed by Mr. Justice Ashurst, "The true definition of robbery is the stealing or taking from the person of another; or in the presence of another, property of any amount with such a degree of *force or terror*, as to induce the party *unwillingly* to part with his property; and whether the terror arises from real or expected violence to the person, or from a sense of injury to the character, makes no kind of difference; for to most men the idea of losing their fame and reputation, is equally, if not more terrific, than the dread of personal injury. The principal ingredient in robbery is a man's being *forced* to part with his property; and the judges are unanimously of opinion, that, upon the

principles of law, as well as the authority of former decisions, a threat to accuse a man of the greatest of all crimes,\* is a sufficient force to constitute the crime of robbery by putting in fear," 1 Leach, 280. But if no actual force was used, and at the time of parting with the money, the party were under no apprehension, but gave it merely for the purpose of bringing the offenders to justice, they cannot be capitally convicted, though we have seen it otherwise, where personal violence is employed, 1 East, P. C. 734. And the influence exercised over the mind, where the force is merely constructive, must be of such a kind as to disenable the prosecutor to make resistance, 2 Leach, 721. 6 East, 126. So that a threat to take an innocent person before a magistrate, and thence to prison, without charging him with any specific crime, is not sufficient to make the party a robber, if he obtain money to induce him to forbear, 2 Leach, 721. Indeed it has been said that the only instance in which a threat will supply the place of force, is an accusation of unnatural practices, 2 Leach, 730, 1. And, it has been recently held, contrary, it seems, to the principle of some former decisions, that even, in this case, the money must be taken immediately on the threat, and not after time has been allowed to the prosecutor to deliberate and advise with friends, as to the best course to be pursued, 1 East, P. C. App. xxi. though, as some of the judges dissented, it does not seem to be decisive. Where, on the other hand, there is an immediate threat of injury to the property, as by pulling down a house with a mob in time of riots, which produces great alarm, and induces a man to part with his money, this has been holden to be a sufficient putting in fear to constitute a robbery, 2 East, P. U. 729, 731. And if a man assaults a woman with intent to commit a rape, and she, in order to prevail on him to desist, offers him money which he takes, but continues his endeavours, till prevented by the approach of a third person, he will be guilty of a robbery, though his original intent was to ravish, 1 East, P. C. 711. If thieves meet a person, and by menaces of death, make him swear to bring them money, and he, under the continuing influence of fear for his life, complies, this is robbery in them, though it would not be so, if he had no personal fear, and acted merely from a superstitious regard to an oath so extorted, 1 East, P. C. 714.

X To constitute a robbery, where an actual violence is relied on and no putting in fear can be expressly shewn, there must be a struggle, or at least a personal outrage. So that to snatch property suddenly from the hand, to seize a parcel carried on the head, to carry away a hat and wig without force, and to take an umbrella of a sudden, have been respectively holden to be mere larcenies, 1 Leach, 290,

1, and in notes. But where a man snatched at the sword of a gentleman hanging at his side, and the latter perceiving the\* design laid hold on the scabbard, on which a contest ensued and the thief succeeded in wresting the weapon from its owner, his offence was holden to be robbery, Id. ibid. And where a heavy diamond pin with a corkscrew stalk, which was twisted and strongly fastened in a lady's hair, was snatched out and part of the hair torn away, the judges came to a similar decision, 1 Leach, 335. The case of the man who tore an ear-ring from the ear, and in so doing lacerated the flesh, which has been already alluded to for another purpose, serves also to confirm this position, 1 Leach, 320. Nor will it excuse the violence that it was done under pretence of law; for where the bailiff handcuffed a prisoner and used her with great cruelty for the purpose of extorting money from her, he was holden to be guilty, as were also a number of men for seizing a wagon under pretence that there was no permit, when none was in reality necessary, 1 Leach, 280, 1 East, P. C. 709. Nor will a pretence of any kind excuse where the essence of the crime is clear; thus if a person ask alms with a drawn sword of one who gives him money through terror, or if he accompany the language of request by such acts or menaces as would overcome a firm and prudent man, the colorable pretext will not avail him, 2 East, P. C. 711. so if a man, by such means, compel another to take less for goods than their value, or take from him money and give him things of less worth as a colorable equivalent, he will be guilty of robbing him, 2 East, P. C. 712, 3.

The indictment.

*Indictment.* The venue must be laid in the county where the crime actually took place, and, in this respect, the proof must correspond with the allegation, 2 Leach, 634: but as the offence of robbing the mail was difficult to be established in any particular county through which it passed, the 42 Geo. III. c. 81. s. 3. provides that if the offence be committed in England, the venue may be laid, either in the county where the offence was committed, or in that where the defendant was taken. The assault must be stated to have been *feloniously* made, and it will not suffice to add this word to the allegation of the taking and the putting in fear, 2 Leach, 564. The indictment must shew that the property was taken with violence from the person, and against the will of the party injured, but it does not seem so certain that it is necessary to state that an actual terror was excited, though this is unquestionably more secure, Fost. 128, 1 Hale, 534. The term *violently* is not requisite; it will suffice if from the whole statement it is clear that a robbery has been committed by a forcible taking of property against the will of the owner, 2 East, P. C. 783, 4. It is not necessary to conclude contrary



to the form of the statute, because though clergy was taken away by act of parliament, the offence existed at common law. On\* the trial should it appear that any of the circumstances of robbery are wanting, but the taking is proved, the defendant may be acquitted of the aggravated offence, and found guilty of simple larceny, R. T. H. 115, Com. Rep. 478, 2 Stra. 1014.

[\*806]

*Punishment.* Robbery was anciently considered as one of the most enormous of felonies, 3 Inst. 69: it was excluded from the benefit of clergy by 23 Hen. VIII. c. 1. and 1 Edw. VI. c. 12. s. 10; not indeed in every case, but when committed in a dwelling-house, or in or near the highway; it was therefore then necessary so to describe the offence in the proceedings. But the 3 and 4 W. and M. c. 9. takes away clergy from principals and accessaries before the fact in robbery, in whatever place it is committed; and therefore it is now not necessary, in any case, to state the fact in an indictment, though, if averred and not proved, it may be rejected as superfluous, 2 East, P. C. 784, 5.

The punishment.

That A. O. late of, &c. on, &c. with force and arms at, &c. in the king's highway, there, in and upon one A. J. in the peace of God and of our said lord the king then and there being, feloniously (b) did make an assault, and him the said A. J. in bodily fear and danger of his life (c) in the highway aforesaid, then and there feloniously did put, and one gold watch of the value of eighteen pounds (d) of the goods and chattels of him the said A. J. from the person and against the will of the said A. J. in the highway aforesaid, then and there feloniously and violently did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity.

Indictment for robbery.  
(a)

That C. H. late of, &c. G. B. late of, &c. T. M. late of, &c. on, &c. with force and arms, in, &c. aforesaid, in the king's highway, there, in and upon the reverend H. C. O. clerk, in the peace of God and our said lord the king, then and there being, violently (f) and feloniously did make an assault, and him the said H. C. O. in bodily fear and danger of his life in the king's highway aforesaid, then and there feloniously

For a robbery on highway and stealing a book, money, and bill of exchange.  
(e)

(a) See other precedents, Burn J. Robbery. Pleader's Assistant, 167. Cro. C. C. 431. 4 Wentw. 51. 251. Starkie, 449.

(b) This word is necessary here, 2 Leach, 564.

(c) It seems doubtful whether this is necessary, though it is safer to

insert it, Fost. 128, ante 805.

(d) As to the mode of stating the property, see post as to larceny.

(e) This indictment was settled by a very eminent crown lawyer. See Leach, 810.

(f) This word seems unnecessary, 2 East, P. C. 783, 4. ante 806.

[\*807] did put, and from the person and against the will of the said H. C. O. in the king's highway aforesaid, then and there violently and feloniously did steal, take, and carry away, one leather purse of the value of two shillings, and one piece of\* the current gold coin of this realm, called a seven shilling piece, of the value of seven shillings, of the goods, chattels and monies of the said H. C. O. and one bill of exchange for the payment of money, to wit, for the payment of the sum of eighteen pounds, of the value of eighteen pounds, the same bill of exchange being the property of the said H. C. O. and the said sum of eighteen pounds payable and secured by and upon the same, being then, to wit, at the time of committing the felony aforesaid, unsatisfied to the said H. C. O. the proprietor thereof, against the form, &c. (g) and against the peace of our said lord the king, his crown and dignity.

For robbery in a dwelling house. (h)

That E. L. late of, &c. and H. T. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in the dwelling house of one J. J. there situate, in and upon A. the wife of the said J. J. in the peace of God and our said Lord the king, then and there being, feloniously did made an assault, and her the said A. in bodily fear and danger of her life, in the said dwelling house, then and there feloniously did put, and one linen pocket of the value of one penny, and three pieces of gold coin, of the proper coin of this realm called guineas, of the value of three pounds and three shillings, of the goods, chattels and monies of the said J. J. from the person and against the will of the said A. in the dwelling house aforesaid, then and there violently and feloniously did steal, take and carry away, against the peace, &c.

For assault with intent to rob by menaces, &c. &c. (i)

That W. F. late of, &c. after the first day of May, in the year of our Lord, one thousand seven hundred and thirty-

(g) This is not necessary, ante 806, 7.

(h) See similar precedent, Cro. C. C. 438.

(i) This indictment was settled by a very eminent crown lawyer. See other precedents, 2 Leach, 703. Cro. C. C. 67. 2 Starkie, 404.

The offence is founded on 7 Geo. II. c. 21. which enacts, "that if any person or persons from and after the 1st May, 1784, shall, with any offensive weapon or instrument unlawfully or maliciously assault, or shall by menaces or in any forcible or violent manner, demand any money, goods, or chattels, of or from any other person or persons with

a felonious intent to rob or commit robbery upon such person or persons, that then, and in every such case, all and every such person and persons so offending, being thereof lawfully convicted, shall be adjudged guilty of felony and punished with transportation for seven years;" with a proviso that if they return from transportation within the time, they shall suffer death without benefit of clergy. It seems to have been thought that in order to bring an offender within this act, an actual demand of money must be made, and the intent to rob could be collected by no other means, 1 Leach, 19.: but it is now settled that if a

four, to wit, on, &c. with force and arms, at, &c. in and upon one F. B. K. in the peace of God and our said lord the king then and there being, unlawfully, maliciously and feloniously did make an assault, and that the said W. F. then and there, with menaces, and in a forcible and violent manner, feloniously did demand two guineas of the lawful gold coin of this realm, of the money of him the said F. B. K. of and from the said F. B. K. with a felonious intent, the said money of the said F. B. K. from the person and against the will of the said F. B. K. then and there feloniously and violently to steal, take and carry away, against the form of the statute, &c. and against the peace,\* &c. And the jurors, &c. do further present, that the said W. F. after the said first day of May, in the year of our Lord one thousand seven hundred and thirty-four, to wit, on

[\*808]

Second  
count.

[\*809]

man stop a carriage and present a pistol at those who are within it, though without any demand of money, or offer to take it, he will be guilty of felony within the statute which, it will be observed, is framed in the disjunctive, 2 East P. C. 418. 8. It may, however, be collected, that the intent must be to rob the party assaulted, and that it will not suffice if the attack be made on one, and the design be to plunder another. Thus, if a highwayman calls to a coachman to stop, and presents the pistol at him, evidently intending to rob the parties within the carriage which he is driving, his offence will only be a misdemeanor at common law, 1 Leach, 18. 330. 1 East P. C. 418. It is now said that if the assault be made with an offensive weapon, a demand must be made; but if no such instrument were used, a demand is requisite: see the subsequent cases on the form of the indictment.

The *Indictment* must exactly pursue the language of the statute, but it is not necessary that all the terms there made use of, should be inserted. Thus when the assault is the only act charged, the terms "unlawfully and maliciously," must be introduced because they are connected with it; but where a violent and forcible demand is well laid, these words will be dispensed with, as the disjunctive *or* intervenes, 1 East P. C. 420. The indictment must either charge an assault, with an offensive weapon with intent to rob, or a de-

mand with the same design, in the technical language of the act; and therefore if it merely allege that the defendant "unlawfully, maliciously, and feloniously made an assault on C. D. and him the said C. D. unlawfully and maliciously did menace, by menacing to blow his brains out, with a felonious intent the monies of the said C. D. to steal, take and carry away," it will be defective, because, in these allegations, there is no averment that the assault was made with an offensive weapon, nor any statement that money was demanded; though either of these would have been sufficient, 1 Leach, 267. So it will not suffice to state, that the defendant made an assault with intent feloniously to steal, and if the offence be thus imperfectly described in the commitment, the party accused may be admitted to bail, 5 T. R. 169. 2 Leach, 583: for the intent charged must be to commit robbery, and, therefore, the term *violently* must be added to *feloniously*, or it must be otherwise shewn that the taking, if accomplished, would have been effected by force or terror, 2 Leach, 702. In the description of the weapons, the rules will apply which were laid down in the case of homicide: the same latitude of proof is also admitted; so that if the weapon be stated in the indictment as a large stick, and it turn out to be a large stone thrown by the prisoner, the defendant may be convicted, 1 East P. C. 421.

Third  
count.

the said, &c. with force and arms, at, &c. aforesaid, in and upon the said F. B. K. in the peace of God and our said lord the king then and there, being, unlawfully, maliciously, and feloniously did make an assault, and that the said W. F. then and there with menaces feloniously did demand two guineas of the lawful gold coin of this realm, of the money of him the said F. B. K. of and from the said F. B. K. with a felonious intent the said money of the said F. B. K. from the person and against the will of the said F. B. K. then and there feloniously and violently to steal, take and carry away, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said W. F. after the said, &c., to wit, on the said. &c. with force and arms, at, &c. aforesaid that is to say, in the parish of — in the said ward of —, &c. aforesaid, in and upon the said F. B. K. in the peace of God and our said lord the king then and there being, unlawfully, maliciously and feloniously, did make an assault, and that the said W. F. then and there in a forcible and violent manner, feloniously did demand two guineas of the lawful gold coin of this realm, of the money of him the said F. B. K. of and from the said F. B. K. with a felonious intent the said money of the said F. B. K. from the person and against the will of the said F. B. K. then and there feloniously and violently to steal, take and carry away, against the form of the statute, &c. and against the peace, &c.

The like  
with an of-  
fensive  
weapon.  
(j)

[*Same as in the last precedent in the commencement.*] With force and arms, at, &c. in and upon C. D. in the peace of God and of our said lord the king then and there being, unlawfully, maliciously and feloniously, did make an assault with a certain offensive weapon, to wit, a pistol, which he the said A. B. in his right hand then and there had and held, with a felonious intent the monies of the said C. D. from the person and against the will of the said C. D. feloniously and violently to steal, take and carry away, against the form, &c. and against the peace, &c.

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(j) See another from Cro. C. C. 8th Ed. 67. 2 Stark. 404.

RAPE. (*k*)

## PRELIMINARY NOTES.

I. *On Women above the age of Consent.*

The\* *offence*. Rape is the carnal knowledge of a female, forcibly and against her will, 3 Inst. 60. 4 Bla. Com. 210. The only difficulty which arises upon this definition, consists in the meaning which ought to be attributed to the words *carnal knowledge*; some judges having supposed that it is sufficient to shew penetration alone, while others have contended that the offence is not complete without emission; but it seems to be agreed by all that the latter without the former will not suffice. Lord Coke, in his reports, supposes both circumstances must concur, 12 Co. 37. though he does not express himself so clearly in his Institutes. Hawkins, without citing any authority or hinting a doubt, declares the same opinion, Hawk. b. 1. c. 41. s. 3. Hale, however, differs from both, and considers the case in Coke's Reports as mistaken, 1 Hale, 628. In more modern times, prisoners have been repeatedly acquitted in consequence of the want of proof of emission, 1 East P. C. 437, 8. In one instance, on the other hand, the prisoner was found guilty under the direction of Mr. Justice Bathurst, who did not consider this fact as necessary to the consummation of the guilt. But, in Hill's case, which was argued in 1781, a large majority of judges decided that both circumstances were necessary, though Buller, Loughborough, and Heath, maintained a contrary opinion, 1 East P. C. 439. 1 Leach, 854. This then, seems to be the stronger opinion, and, at the present day, if no emission took place, it would be more safe to indict for the attempt to commit, by which means a severe punishment might be inflicted. [\*810]  
The of-  
fence.

It is the essential feature of this crime, that it must be against the will of the female on whom it is committed: but its atrocity is not mitigated by shewing that she yielded, at length, to violence, if her consent was obtained by duress or threats of murder. Hawk. b. 1. c. 41. s. 6. nor will any subsequent acquiescence on her part, do\* away the guilt of the ravisher. The circumstance of the [\*811]

(*k*) As to this offence in general, see 3 Inst. 60. 1 Hale 626 to 636. Hawk. b. 1. c. 41. Com. Dig. Justices s. 2. 4 Bla. Com. 210 to 215. 1

East P. C. 433 to 449. Burn J. Rape. Williams J. Felony (without Clergy.) Dick J. Rape.

woman's generally submitting to illicit intercourse, will not diminish the guilt of her ravisher, because she is still under the protection of the law, and must not be deprived of the opportunity of repentance, Hawk. b. 1. c. 41. s. 7. Formerly it was said to be no rape for a man to have forcible knowledge of his own concubine, 1 Hale, 628. Hawk. b. 1. c. 41. s. 7. ; but the law now presumes the possibility of her return to virtue, 1 Hale, 628. A man cannot, indeed, be himself guilty of a rape on his own wife, for the matrimonial consent cannot be retracted, 1 Hale, 629 ; but he may be criminal in aiding and abetting others in such a design, 1 Harg. St. Tr. 388. And where a marriage is compelled and consummated by force, though the husband cannot be appealed of rape till it is dissolved, as till then it is a marriage *de facto*, he will be liable afterwards to be indicted, as if no ceremony had passed ; though such a proceeding has seldom taken place, because the 3 Hen. VII. c. 2. prescribes a specific remedy, 1 Hale, 629, 630.

Principals  
and access-  
saries.

All who are present, of both sexes, aiding in the perpetration of rape, are principals in the second degree, Hawk. b. 1. c. 41. s. 10. And though an infant under the age of fourteen years is so strongly presumed to be incapable of committing a rape, that no evidence will be admitted to implicate him as the actual ravisher, he may be guilty as an abettor if shewn to possess a mischievous discretion, 1 Hale, 630. In rape there may be accessaries both before and after the fact, for even if, according to Hale, it was made felony by statute, as the act is silent respecting accessaries, it must have all the accompaniments of felony at common law, 1 Hale, 631, 2.

Bail.

*Bail.* Although justices of the peace have no power to bail for rape, or indeed for any other felony, the court of king's bench will sometimes bail a party ; for this is one of those offences which are more easily charged than refuted, and the accusation of which frequently arises from malice and revenge : so that where the evidence seems dubious, or the rank and fortune of the defendant render it improbable that he will abscond, and his innocence seem rather to be presumed from his voluntary surrender, this court will admit him to bail, and those charged as accessaries in his crime. But they will require ample securities correspondent with the nature of the charge and the rank of the offender. Thus, on affidavits of particular circumstances, Lord Baltimore was bailed himself in four thousand pounds, and four sureties in one thousand pounds each, and the two persons charged as aiding him in four hundred pounds each, and sureties to a similar amount ; they being persons of inferior condition. 4 Burr. 2179.



The *indictment* must charge the offence to have been *feloniously* committed,\* and must contain the technical word *ravished*. 1 Hale, 632. But it does not seem so clear whether the averment that the defendant "*carnally knew*" is necessary to be added. It is urged that the word "*ravished*" includes the charge of carnal knowledge. Hawk. b. 1. c. 25. s. 36. 11 H. 4. 14. Co. Lit. 133. 2 Inst. 180. Standf. 81. But as Lord Hale and Lord Coke say, that "*rapuit*" and "*carnaliter cognovit*" ought both to be inserted, it would be very unsafe to omit the latter. 1 Hale, 632, 8, 9. 3 Inst. 60. It is usual, to conclude contrary to the form of the statute, and according to Lord Hale this is requisite. 1 Hale, 632. But this proceeds on the supposition that rape was no felony at common law, which seems erroneous, as we shall see hereafter: 1 Inst. 190. 2 Inst. 180, 433. It is, however, usual, and certainly not improper, to insert it.

The Indictment.  
[\*812]

*Evidence.* Whether both penetration and emission are necessary to constitute rape, or not; it is certain that no direct evidence need be given to the latter, but that it will be presumed on proof of the former, until rebutted by the prisoner. 2 Leach, 854. 1 East, P. C. 440. And it will suffice to prove the least degree of penetration, so that it is not necessary that the marks of virginity should be taken from the sufferer. 1 East, P. C. 438. The degree of evidence which in this case ought to satisfy the jury of the defendant's guilt, depends on the circumstances of each case, and cannot be reduced to specific rules: but some general principles have been laid down which it will always be safe to observe. Lord Hale lays down that this accusation is easily to be made, hard to be proved, and harder to be defended by the party accused, notwithstanding his innocence; and he adduces some striking instances within his own knowledge where the evidence was most positive against the defendant, when it was absolutely impossible he could be guilty; 1 Hale, 635, 6, and therefore Mr. Justice Blackstone observes, that the credibility of the testimony of the prosecutrix must be left to the jury upon the circumstances of fact by which it is attended; for instance, if the witness be of good fame, if she presently discovered the offence and made search for the offender; if the party accused fled for it, these and the like are concurring circumstances which give greater probability to her evidence: but, on the other side, if she be of evil fame and stand unsupported by others; if she concealed the injury for any considerable time after she had an opportunity to complain; if the place where the fact was alleged to have been committed was where it was possible she might have been heard and she made no outcry: these and the like circumstances carry a strong but not conclusive presumption that

What evidence will suffice.

[\*813] her story is fictitious: 1 Hale, 633. 4 Bla. Com. 213. but the rule respecting\* the time that elapses before the prosecutrix complains will not apply where there is a good reason for the delay, as that she was under the control, or influenced by fear of her ravisher. 1 East, P. A. 445. And so all other general rules, as they are deduced from circumstances, must yield to such as render them unsafe guides to the discovery of truth. It was once thought that where the woman conceived on the occasion, no rape could be committed; but this idea is now exploded, as being countenanced neither by reason nor justice. Hawk. b. 1. c. 41. s. 8.

What witnesses are competent.

The party grieved is, in all cases, a competent witness, though as we have seen, the jury are to judge of the credit due to her evidence. 1 Hale, 633. And even where the husband is charged with aiding a rape on his wife, she, contrary to the general principle, may be examined as a witness against him; 1 Harg. St. Tr. 388. 1 Hale, 629. and the depositions of the female, taken before a magistrate, may be read in evidence after her death, though not authenticated by her signature. 2 Leach, 854.

Punishment.

*Punishment.* Rape is considered by Lord Hale as having been made felony by statute: 1 Hale, 631, 2. but this is expressly contradicted by Lord Coke, who enters learnedly into the ancient law respecting this offence, in a statement which can leave little doubt that he is correct in his opinion. 2 Inst. 180. According to him, who is followed by Blackstone and Hawkins, it was anciently punished with death; a severity which coincides with the rules of the old Gothic and Scandinavian constitutions. 2 Inst. 180. Hawk. b. 1. c. 41. s. 11. The penalty was mitigated, or rather altered into a deprivation of sight as well as of the offending members by William the Conqueror, who probably brought the custom from Normandy. It seems however that the female on whom the injury was committed had it in her power to save her ravisher from this terrible sentence by accepting him as her husband. 2 Inst. 180. Hawk. b. 1. c. 41. s. 11. At length the offence was by the statute of Westminster, 3 Ed. 1. c. 13. reduced to a misdemeanor and punished only with two years imprisonment, and a fine at the king's pleasure. 2 Inst. 180. But this was found to be so great an encouragement to offenders, that it was again made felony by Westminster, 2. c. 34. and, at length, by 18 Eliz. c. 7. it was excluded from the benefit of clergy. The last act, however, applied only to such as were convicted by verdict, outlawry, or confession; but by 3 W. and M. c. 9. s. 2. those who stand mute, answer indirectly, or challenge peremptorily, more than twenty are reduced to the same condition. Principals in the second degree are included in these statutes; but as no mention is made of access-

raies either before or\* after, they must still be admitted to clergy as in former periods. 1 Hale, 633. [\*814]

## II. On Children within the age of Consent.

*Offence.* It was anciently doubted whether a rape could be committed upon a child under ten years of age. 1 Hale, 630. Dyer, 304, a. And therefore by 18 Eliz. c. 7. s. 4. it is enacted "that if any person shall unlawfully and carnally know and abuse any woman child under the age of ten years, every such unlawful and carnal knowledge shall be felony without benefit of clergy." Under this act the consent or resistance of the infant is immaterial. Lord Hale intends that, at common law, all sexual intercourse with a child under twelve years, whether with or without her consent, is rape. He argues that twelve, and not ten, is the age of consent, at least to marriage; and that the statute of Westminster, 1. which reduced all rape to misdemeanor, refers to that period. 1 Hale, 631. At all events, if the deflowering an infant within the age of ten and twelve with her own consent be rape, it is but a misdemeanor still; for the statute of Westminster the second, which again made rape a felony, does not reach this case; and the 18 Eliz. c. 7. which excludes it from clergy, expressly relates only to children within ten years of age. It is therefore only within that age that a capital offence can be committed when the female assented to the crime. The carnal knowledge of infants under ten, seems rather to be a new felony created by a statute than a rape, to the definition of which last offence, force seems to be essential. 1 East, P. C. 436. The of fence.

The *indictment* must, in this case, conclude *contrary to the form of the statute*, for the offence itself depends on the act of Elizabeth as well as the penalty. 1 East, P. C. 448. And for the same reason it must follow the terms of the provision, and charge that the defendant feloniously, unlawfully, and carnally, knew and abused the party injured, being under the age of ten years, omitting the word *ravished*, which implies violence. id. ibid. The indictment.

*Evidence.* It seems to have been anciently thought that the admissibility of children as witnesses depended on their age: and Lord Hale seems to think that though, if under nine or ten, they cannot be sworn, they may be examined without oath to give the court information, though such a statement, if uncorroborated, would never be sufficient to warrant a conviction. 1 Hale, 634, 5. But, in modern times, more rational principles have been admitted to prevail. The admissibility of testimony now depends not on the age, but on the understanding of the witness. Children of any age who\* com- Evidence, [\*815]

prehend the nature of an oath, and are capable of feeling the obligations it imposes, may be admitted to give evidence. 1 Leach, 199, 430. ante 724. 1 vol. 590. And if an infant who is a material witness appears on examination by the court ignorant of the consequences of falsehood and the responsibility incurred by an appeal to heaven, the trial may be put off till the next assizes or sessions, and the judge may direct the child to be instructed by a clergyman in the interval. 1 Leach, 430. in notis. On the other hand, if the party is not fit to be sworn, he is equally unfit to be examined for any purpose on a trial; 1 Leach, 110, 199. for nothing can be received in evidence, in criminal cases, but that which is given on oath; and nothing but evidence ought to influence the decision of the jury.

### INDICTMENTS FOR RAPE OF WOMEN, ABOVE THE AGE OF CONSENT.

Indictment for a rape. (*l*)

That A. O. late of, &c. not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c. with force and arms, at, &c. in and upon one A. J. spinster, in the peace of God and our said lord the king then and there being, violently and feloniously, did make and assault, and her the said A. J. against the will of her the said A. J. (*m*) then and there feloniously (*n*) did ravish, (*o*) and carnally know, (*p*) against the form of the statute in such case made and provided, (*q*) and against the peace of our said lord the king, his crown and dignity.

### INDICTMENTS FOR RAPE OF CHILDREN WITHIN THE AGE OF CONSENT.

For carnally knowing and abusing a female child under the age of ten years. (*r*)

That A. B. late of, &c. on, &c. at, &c. in and upon one E. P. spinster, a woman (*s*) child under the age of ten years, to

(*l*) See other precedents, Burn J. Rapc. Cro. C. C. 401. Starkie, 409. West. Ent. 172. 174. 328. 6 Wentw. 368. Co. Ent. 358.

(*m*) See ante 810.

(*n*) This word is requisite, 1 Hale, 632 ante 811.

(*o*) This is necessary, 1 Hale, 632. ante 811, 2.

(*p*) It is certainly better to insert these words, though some have considered that they are not requisite,

see ante 812.

(*q*) This conclusion is proper though probably its omission would not be material, see ante 812.

(*r*) See other precedents Cro. C. C. 401. Starkie, 411. Old Form West. Ent. 173. see notes ante 814.

(*s*) Sometimes the words "woman child" are omitted, see Cro. C. C. 401. but it seems better to follow the words of the statute.

wit, of the\* age of nine years and upwards, in the peace of God and our said lord the king then and there being, feloniously did make an assault, and her the said E. P. then and there wickedly, unlawfully and feloniously, did carnally know and abuse, against the form, &c. and against the peace, &c. [\*816]

## INDICTMENTS FOR ASSAULTS WITH INTENT TO RAVISH.

That T. M. late of, &c. on, &c. with force and arms, at, &c. in and upon one M. M. spinster, in the peace of God and of our said lord the king then and there being, did make an assault, and her the said M. M. did then and there beat, bruise, wound, and illtreat, so that her life was then and there greatly despaired of, (u) with an intent her the said M. M. against her will then and there feloniously to ravish and carnally know, and other wrongs to the said M. then and there, with force and arms, did to the great damage of the said M. M. and against the peace, &c. [*add another Count for a common assault as post 821.*]

For making an assault on a single woman with an intent to ravish her. (t)

That D. H. late of, &c. on, &c. at, &c. aforesaid, with force and arms, made an assault upon one E. F. wife of one J. F. she the said E. F. in the peace of God and our said lord the king then and there being, with an intent then and there, violently and feloniously, and against the will of the said E. F. to ravish and carnally know her, and other wrongs to the said E. F. then and there did, to the great damage of the said E. F. and against the peace, &c. [*Second Count for a common assault as post 821.*]

For an assault on a married woman with intent to commit a rape.

That\* J. H. late of, &c. and A. R. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in and upon E. the wife of one H. S. did make an assault, (she the said E. in the peace

[\*817]

Against two persons for assaulting a married woman

(t) See other precedents, 4 Wentw. 73. Cro. C. C. 61. 6 Wentw. 394. Starkie, 386. Where the offence was not completed, or there seems no prospect of substantiating it by evidence, the defendant may be indicted at common law for an assault with intent to ravish. But care must be taken not to indict for the misdemeanor, when the evidence will prove the felony; for, if this should appear on the trial, the defendant must be acquitted, 1 East P. C. 411. Though the attempt is only a misdemeanor, it may be severely punished by fine, imprisonment, pillory, and the finding sure-

ties for good behaviour. In one instance the latter were required for life. Cro. Car. 332; but Mr. East justly observes, that this punishment is not consonant with the practice of our present constitution, in the apportionment of discretionary punishment, as it tends to imprisonment for life, 1 East, P. C. 441.

(u) The words "bruise and wound, &c. so that her life, &c." should be omitted when contrary to the facts.

(w) See similar precedents, Cro. C. C. 164. 7 Ed. Starkie, 386.

with an intent that one of them should ravish her. (w)

of God and our said lord the king then and there being,) and her the said E. then and there did beat, wound and ill treat so that her life was greatly despaired of, with intent, that he the said J. H. should then and there feloniously, and against the will of the said E. ravish and carnally know her the said E. and other wrongs, &c. [*Second count for a common assault as post 821.*]

For an assault on an infant under ten years of age with intent carnally to know her.  
(x)

That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in and upon one A. W. a female child under the age of ten years, to wit, of the age of nine years, and in the peace of God and our said lord the king then and there being, did make an assault, and her the said A. W. then and there did beat, wound and illtreat, so that her life was greatly despaired of, with an intent her the said A. then and there, unlawfully and feloniously, carnally to know and abuse, and other wrongs, &c. [*Second count for a common assault as post 821.*]

## INDICTMENT FOR FORCIBLE ABDUCTION OF WOMEN.

For felony in taking a woman having substance, &c. against her will, under the stat. 3 H. 7. c. 2. (y)

That A. B. late of, &c. on, &c. at, &c. in and upon one M. W. spinster, then and yet being under the age of fourteen

(x) See a similar precedent, Cro. C. C. 61

(y) See other precedents, Cro. C. C. 475. Trem. P. C. 34. Pla. Cor. 174. West. 224. Ra. Ent. 487. Starkie, 410. and see the indictment on which Sweenden and his assistants were convicted for carrying away Miss Rawlins, and the proceedings thereon, 5 Harg. St. Tr. 465

As to the offence in general, see 1 Hale, 659 to 662. Hawk. b. 1. c. 41. 4 Bla. Com. 208, 9. 1 East P. C. 452 to 455. The 3 Hen. VII. c. 2. after reciting, that "where women, as well maidens as widows and wives, having substances, some in goods moveable, and some in lands and tenements, and some being heirs apparent unto their ancestors, for the lucre of such substances have been oftentimes taken by misdoers, contrary to their will, and after married to such misdoers, or to other by their assent, or defiled, to the great displeasure of Almighty God, and con-

trary to the king's laws, and disparagements of the said women, and utter heaviness and discomfort of their friends, and to the evil ensample of all other;" proceeds to enact, "That what person or persons from henceforth that taketh any woman so against her will unlawfully, that is to say, maid, widow, or wife, that such taking, procuring, and abetting to the same, and also receiving wittingly the same woman so taken against her will, and knowing the same, be felony; and that such misdoers, takers, and procurators to the same, and recitors knowing the said offence in form aforesaid, be henceforth reputed and adjudged as principal felons; provided always, that this act extend not to any person taking any woman, only claiming her as his ward or bond-woman." The 39 Eliz. c. 9. s. 1. takes away clergy from persons who offend against this statute.

To constitute an offence under



years, and a\* maid, and only daughter and heir of P. W. esquire, then lately deceased, she the said M. W. then and there having substance in moveable\* goods to the value of one thousand pounds of lawful money of Great Britain; and

[\*818]

[\*819]

this statute, it will suffice if either the original taking, or the marriage, was against the will of the party injured; for if she went with the offender in the first instance, and afterwards was forced to continue with him against her will, or if she was originally taken by violence and afterwards consented, the offence will be complete, 5 Harg. St. Tr. 450. Hawk. b. 1. c. 41. s. 7, 8. But if the forcible abduction is confined to one county, and the marriage be solemnized by consent in another, the defendant cannot be indicted in either, though had the force been continued into the county where the marriage took place, no subsequent consent would avail, Cro. Car. 488 Hob. 183. Hawk. b. 2. c. 25. s. 40. : and where the female is under no restraint at the time of marriage, those who are present, but who are ignorant of the previous circumstances, will not share in the guilt of the abduction, Cro. Car. 489. 493. It seems doubtful how far accessaries after the fact under the statute of Henry, are excluded from their clergy: those who merely aid the offender himself are, of course, intitled to the benefit by the rule of common law, as no mention is made of them in the statutes; but those who receive the female are expressly made principals by the act creating the offence; and as by 39 Eliz. c. 9 clergy is taken away generally from all convicted of any offence under the former provision, it has been supposed that those who become accessaries, in this particular mode, are excluded. Mr. East, however, argues, that as the last act provides that it shall not extend to any but such as are principals, procurers, or accessaries before; and as those who assist in concealing the female seem rather to come under the denomination of accessaries after, it could not have been the intention of the legislature to take away clergy from offenders in this degree, 1 East, P. C. 453. On the other hand, it may be

observed, that they are expressly made principals by the original enactment—that, as such, they must be taken to be afterwards considered—that, therefore, they come under that description in the statute of Elizabeth, and that the intention of the proviso there was merely to guard against the extension of the severity to those accessaries after the fact, who were left, as at common law, in other felonies.

The *Indictment* of the offender under 3 Hen. VII. c. 2. must set forth, that the woman taken away, had lands or goods, or that she was heir apparent, as well as that she was actually married or defiled, because these things are set forth in the preamble to which the enacting clause refers, Cro. Car. 484. : the place and manner of taking must also be set forth in the proceedings, Id. *ibid.* : it must also be alleged, that the taking was for *lucre*, to bring it within the meaning of the statute, Hob. 182. Hawk. b. 1. c. 41. s. 5. ; but it is not necessary to state that it was done with an intention to marry or defile, because this is not required by the words of the act, nor would the absence of it lessen the injury, Cro. Car. 489. Hawk. b. 1. c. 41. s. 6. ; it seems, however, to be both safe and usual to insert it, 1 Hale 660

*Evidence.* The party injured, if the force continued till the time of the marriage, will be a good witness against the offender, because she is not his wife *de jure*, and may herself swear to the compulsion, 5 Harg. St. Tr. 456. 1 Ventr. 243. Cro. Car. 488. But some writers seem to think that where the actual marriage was good, in consequence of a subsequent consent, the wife cannot be sworn; though the better opinion seems to be that the offender should not be allowed to take advantage of his own wrong, and that the act of marriage, which is the completion of his offence, should not be constructed to disqualify the wit-

[\*820] in lands and tenements, to the value of fifteen hundred\* pounds by the year, of like lawful money (z) did make an assault, and her the said M. then and there did put in great danger of her life, and her the said M. with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully, feloniously, and against the will of her the said M., violently

ness on whose testimony he may be convicted, 1 Hale, 301. 4 Bla. Com. 209. 1 East P. C. 454. And indeed, it would now probably be considered that a wife *de jure*, may always be a witness against her husband in case of personal injuries. It seems that her dying declarations may be read against him on a trial for her murder, 1 Leach, 500.; and it is certain that her testimony may be received when he is charged with assisting others to ravish her, 1 Harg. St. Tr. 388.

Besides the offence on the statute of Henry, an inferior degree of the same crime, but not attended by force, is punished by 4 & 5 Ph. & M. c. 8. which enacts, "*that if any person above the age of fourteen years shall unlawfully take or convey, or cause to be taken or conveyed, any maid or woman child unmarried, being within the age of sixteen years, out of or from the possession and against the will of her father, mother, or guardian, he shall suffer two years imprisonment, or pay such fine as shall be assessed by the court.*" And, by the fourth section of the same act; if any person shall so take away or cause to be taken away, and deflower any such maid or woman child or shall, against the will or knowledge of the father, or, if he be dead of the mother having the tuition of such child, contract matrimony with her by secret letters, messages, or otherwise, he shall be imprisoned for five years, or pay such fine as shall be assessed by the court, half to the king, and half to the parties aggrieved; the female also consenting to the marriage, forfeits all her lands to her next of kin during the life of her husband. Under this act it has been determined that there must have been always a refusal in the parent or guardian to consent to the marriage, and that if he once assented, no restriction can do

away the effect of his former approval, 3 Mod. 169. And it has been holden, that if a parent place a daughter under the care of another who, by collusion, marries her to his own son, the case will not be within the act if the marriage be solemnized in a parish church, at a canonical hour, and without any attempt at privacy, 3 Mod. 84. The principal of this case is disputed by Mr. East, who contends, that it would protect a school-mistress in disposing of the female infants under her care, in marriage; when it is manifest no power of that kind is ever deputed, but is impliedly reserved by the parent, 1 East P. C. 457. An illegitimate child is within this statute, and under the protection of the putative father, 2 Stra. 1162. And a mother, notwithstanding her subsequent marriage, retains the guardianship of her child; she has in law the custody of her person, though the daughter has voluntarily left her several hours before the contract of marriage; and the consent of the step-father is altogether immaterial, 3 Co. 39. b.

On the general prohibitory clause of this act, an indictment may be supported, 1 East P. C. 459. see indictments West. 158. Trem. P. C. 266.; but as these stolen marriages under sixteen, have been made void by 26 Geo. II. c. 33. these provisions have fallen into disuse. The mere fact of marriage with an infant without the consent of her parents seems to be not indictable at common law, see Id. ibid. Andr. 312. Cro. Car. 465. If however this be effected by conspiracy, by false pretences by deceit, or other criminal practices, the offender may be indicted, or an information filed against him, Id. ibid. As to conspiracies to marry paupers, &c. see post Conspiracy.

(z) This allegation is necessary, Cro. Car. 484.

did take, force and convey away, with intention that he the said A. B. for lucre, and the sake of such her substance, feloniously should marry and have the said M. to wife; (a) and that the said A. B. afterwards, to wit, on, &c. by the assent, procurement, and abatement of the said A. M., J. J. and C. the wife of F. C., late of, &c. gentleman, and W. C. late of the same parish and county, clerk, with force and arms, at, &c. feloniously, and for lucre of the said substance, of the said W. M. did marry, and had the said W. M. to wife; against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. M., J. J. C., the wife of F. C. and W. C., on the said fourteenth day of November, in the year aforesaid, at, &c. in the county of ——— aforesaid, with force and arms, knowingly, and feloniously were assisting, aiding, procuring, assenting, abetting and maintaining the aforesaid A. B. in doing and committing the felony aforesaid, against the form of the statute, &c. and against the peace, &c.

## INDICTMENTS FOR ASSAULTS, &c. AT COMMON LAW.

Middlesex.\* (b) The jurors for our lord the king upon their oath present, that A. B. late of the parish of ———, in the county of Middlesex, yeoman, on the ——— day of ———, in the ——— year of the reign of our sovereign lord George the third, by the grace of God of the united kingdom of Great Britain and Ireland king, defender of the faith, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one J. H. in the peace of God and our said

Indictment for a common assault. (a) [\*821]

(a) It is safest to insert this allegation, Cro. Car. 489. 1 Hale, 660.

(a) See other precedents, Cro. C. C. 60. Cro. C. A. 34. Burn. J. Assault. Starkie, 384, 5. As to what constitutes an assault, see Com. Dig. Battery. Bac. Ab. Assault and Battery. It has been said that a person could not be indicted for assaults on two distinct parties in the same indictment; but this doctrine is now exploded, 2 Ld. Raym. 1572. 2 Burr. 984. If a count for assault be joined with one for a riot, the grand jury may return ignoramus as to the latter, and billa vera as to the former. Cowp. 325. For assaults on revenue officers see ante 126 to 139; in ob-

struction of public justice, on constables, &c. ante 146, 154, to 158; for assaults in rescues, 182, 208; for striking in a court of justice, 208; for assaulting commissioners of taxes, 214. See also assaults with intent to rob, ante 807; to spoil clothes post 833; to commit rapes ante 816; and unnatural crimes ante 50; assaulting a privy counselor, ante 99; assaulting in king's palace, Trem. P. C. 188; in a churchyard, ante 21; for assaulting to check the progress of grain, ante 538; and see index, Tit. ASSAULT.

(b) As to form of the commencement and statement of addition, &c. see ante 2 vol. 1, 2, 3. &c.

lord the king, then and there being, (c) did make an assault\*, and him the said J. H. then and there did beat, bruise, wound and ill treat, so that his life was greatly despaired of, (d) and other wrongs to the said J. H. then and there did, to the great damage of the said J. H., and against the peace of our said lord the king, his crown and dignity.

Form of a second or subsequent count for another assault.

For an assault by casting a person on a brick floor and kicking him. (e)  
[\*822]

And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. on, &c. with force and arms, at, &c. aforesaid, in and upon the said J. H., in the peace of God and our said lord the king then and there being, did make *another* assault and, &c. [*state the assault as in the last precedent with the same conclusion.*]

[Commencement as supra.] in and upon one A. W., in the peace of God and our said lord the king then and there being, did make an assault, and him the said A. W. then and there did beat, bruise,\* wound and ill treat, so that his life was greatly despaired of; and that the said J. W. with both his hands, then and there violently cast, flung and threw the said A. W. to, upon and against a certain brick floor there, and him the said A. W. in and upon his head, neck, breast, back, sides and other parts of his body, with both the feet of him the said J. W. then and there violently and grievously did kick, strike and beat, giving to the said A. W. then and there, as well by such flinging, casting and throwing of him the said A. W. as also by such kicking, striking and beating of the said A. W. as aforesaid, in and upon the head, neck, breast, sides, back and other parts of the body of him the said A. W. divers bruises, hurts and wounds, and other wrongs, &c.

For an assault and beating out an eye. (f)

That J. B. late of, &c. widow, being a person of a wicked and malicious disposition, on, &c. with force and arms, at, &c. aforesaid, in and upon upon M., the wife of J. W., violently did make an assault, (she the said M. in the peace of God and our said lord the king then and there being,) and her the said M. then and there did beat, wound and ill treat, so that her life was greatly despaired of;\* and that she the said J. B. with her right hand the said M., in and upon the left eye of her the said M., then and there unlawfully, violently and maliciously did strike, by means whereof the said M. then and there the use, sight and benefit of her said left eye entirely lost, and was deprived of, and also by means of

(c) These words are usually inserted, but are omitted in some precedents, see 2 starkie, 384. They are not necessary.

(d) It is usual to insert all these words, though the evidence will only prove a less aggravated assault, 1 Saund. 14. n. 3. but it would be

preferable, when only a slight assault can be proved, to frame the indictment according to the facts, and omit the latter words.

(e) See other precedents, Cro. C. C. 64. Starkie, 391.

(f) See other precedents, Cro. C. C. 7 Ed. 171. 8 Ed. 65. Starkie, 389.

the premises she the said M. became sick, weak, languid and distempered, and remained so sick, weak, languid and distempered for a long time, to wit, from thence until the day of taking this inquisition, and other wrongs to the said M. then and there violently and maliciously did, to the great damage and impoverishment of the said J. W. and M. his wife, to the evil example, &c. and against the peace, &c. [*add a count for a common assault as ante 821.*]

[*Same as the last to the asterisk and then proceed as follows.*] And also that she the said J. B. did then and there, unlawfully and injuriously, seize and lay hold of the said M. by the hair of her head, and did then and there with great force, wrath and violence, pull and drag the said M. by the same, by means whereof, she the said J. B. did then and there unlawfully, cruelly and injuriously pull and tear the hair of the head of her the said M. off by the roots, and the head of her the said M. was thereby grievously wounded and hurt, and also by means of premises the said M. was put to great pain and torture, and other wrongs to the said M. then and there violently and maliciously did, to the great damage of the said J. W. and M. his wife, &c.

For the like and tearing the hair off prosecutor's head by the roots. (g)

That\* J. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, did unlawfully incite, provoke and encourage, a certain dog of and belonging to the said J. B., to bite him the said J. S., by means whereof the same dog did then and there grievously bite the said J. S., in and upon the right leg of him the said J. S., and the said leg of him the said J. S. was thereby then and there grievously hurt and wounded, to the great damage of the said J. S., and against the peace, &c.

For an assault and encouraging a dog to bite. (h) [\*823]

That J. J. late of, &c. gentleman, and S. P. C. late of, &c. esquire, being persons of wicked minds and malicious dispositions, and not regarding the laws of this kingdom, and having conceived great malice, hatred and ill will towards R. L., on, &c. with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully and maliciously did make an assault upon the said R. L. then and there being in the peace of God and our said lord the king, and that the said J. J. by the procurement of the said S. P. C. with a certain large walking stick, which he the said J. J. in his right hand then and there had and held, and also with the fists of him the said J. J. then and there unlawfully, maliciously and violently did strike and beat him the said R. L. in and upon the head, face, shoulders and arms of the same R. L., and giving to him the said R. L. then and there by such striking and

For an assault with a walking stick. (i)

(g) See other precedents, Cro. C. C. 65. Starkie, 389.

C. C. 65. Starkie, 389.

(i) See a precedent, 4 Wentw.

(h) See other precedents, Cro.

beating of him the said R. L. with the walking stick aforesaid, and also with the fists of the said J. J. divers severe and dangerous blows, strokes and bruises, in and upon the head, face, shoulders and arms of him the said R. L., by means whereof the said R. L. was then and there in great danger of losing his life; and the said J. J. and S. P. C. then and there unlawfully and maliciously, did other wrongs to the said R. L., in contempt, &c. and against the peace of, &c.

For riding  
over a per-  
son with a  
horse.

[As ante 821 to \*] And then and there unlawfully and maliciously, and with great force and violence, road and drove a certain horse against, upon and over the said J. S., and thereby then and there greatly bruised, wounded and ill treated him, insomuch that his life was then and there greatly despaired of, and other wrongs, &c. [*Second count for a common assault as ante 821.*]

For an as-  
sault by  
driving a  
coach a-  
gainst pro-  
secutor's  
chaise.

[\*824]

That C. M. late of, &c. coachman, being a person of a wicked, cruel and malicious mind and disposition, on, &c. with force and arms, at, &c. in the king's highway there, unlawfully did assault H. D. A. the wife of W. W. and A. W. their daughter, then and there respectively being in the peace of God and our said lord the king, in\* a certain carriage, called a four-wheel chaise, then and there drawn by one gelding, lawfully and peaceably passing and travelling in the highway aforesaid, and that the said C. M. then and there driving four horses, then and there drawing a certain stage coach in the highway aforesaid, then and there unlawfully, wilfully, furiously and maliciously, did drive the said four horses and coach towards and against the said carriage called a four-wheel chaise, so passing in the highway aforesaid, and that the said C. M. by such driving of the said four horses and coach as aforesaid, then and there unlawfully, wilfully, furiously and maliciously, did overturn, break, damage and spoil the said carriage, called a four-wheel chaise, and thereby forced and threw the said H. D. A. the wife of the said W. and A. W. from and out of the said last mentioned carriage, into and upon the highway aforesaid, and by means whereof the said H. D. A. the wife of the said W. W., and A. W. were then and there severally and respectively, grievously hurt, bruised and wounded, and were put in great danger of losing their lives, and the said C. M. then and there unlawfully, wilfully and maliciously did other wrongs to the said H. D. A. the wife of the said W. W., and A. W., to the great damage of the said, &c. in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said C. M. being such person as aforesaid, afterwards, that is to say, on, &c. with force and arms, in, &c. aforesaid, in the highway there, unlawfully, wilfully and furiously, did drive four horses then

Second  
count.



and there drawing a certain stage coach, under the care and guidance of him the said C. M. in the highway aforesaid, towards and against a certain four-wheel chaise, then and there drawn by one gelding in the highway aforesaid, wherein the said H. D. A. the wife of the said W. W., and A. W., were then and there severally and respectively passing and travelling in the highway aforesaid, and that the said C. M. by such driving of the said four horses, so drawing the said coach as last aforesaid, then and there unlawfully, wilfully and maliciously, did overturn, break, damage and spoil the said carriage, called a four-wheel chaise, and forced and threw the said H. D. A. the wife of W. W., and A. W., from and out of the said last mentioned four-wheel chaise, into and upon the highway aforesaid, by means whereof the said H. D. A. the wife of the said W. W., and A. W. were severally and respectively grievously hurt, bruised and wounded, and were put in great danger of losing their lives, and the said C. M. then and there unlawfully, wilfully and maliciously, did other wrongs to the said H. D. A. the wife of the said W. W., and A. W., to the great damage of the said, &c. [as before,] in contempt, &c. *Third count for a common assault as ante 821.*

That\* C. C. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in the public highway there, unlawfully, wilfully and violently, did drive and force a certain horse and cart, under the care and guidance of him the said C. D. to, at and against a certain chaise drawn by two horses, under the care of one E. F. by means whereof the said E. F. was then and there thrown from and off the said chaise, to and against the ground, and was thereby put in great peril and danger of his life, and other wrongs, &c. to the damage, &c. and against the peace, &c. [*Second count for common assault as ante 821.*]

In and upon one R. C. in the peace of God, and our said lord the king, and in a certain chaise drawn by one horse, in the king's highway then and there being, did make an assault, and that the said J. P. then and there driving one horse, drawing a cart, did then and there in the highway aforesaid, unlawfully, maliciously and violently drive the said horse, so as aforesaid drawing the said cart, to and against the said chaise, and by such driving did then and there in the highway aforesaid, unlawfully and maliciously force the said cart against the said chaise, and he the said J. P. with the off wheel of the said cart did then and there in the highway aforesaid, unlawfully and maliciously overturn the said chaise, in which the said R. C. then and there was as aforesaid, by

For driving a cart against a chaise and throwing the driver from the chaise, and for assault and battery. (i) [*\*825*]

For assaulting the driver of a chaise, and with the off wheel of a cart overturning the chaise. (k)

(j) This is a recent form, settled by counsel.

(k) See other precedents, C. C. C. 65. Starkie, 388.

means of which overturning of the chaise aforesaid, he the said R. C. then and there was grievously hurt, bruised and wounded, and other wrongs, &c. [*Second count for a common assault as ante 821.*]

For an assault and driving a cart against a chariot and breaking the back of one of the horses drawing the chariot. (l)

[\*826]

In and upon one E. L. in the peace of God and of our said lord the king, in a certain chariot drawn by two horses in the king's highway then and there being, did make an assault, and the said E. P. then and there driving two horses drawing a cart, did then and there in the king's highway aforesaid, unlawfully, violently and maliciously drive the said horses, so as aforesaid drawing the said cart to and against the said chariot, and one of the said horses drawing the same, and by such violent driving, did then and there in the highway aforesaid, unlawfully and maliciously force the said cart against the said chariot and horse; and he the said E. P. with the near wheel of the said cart did then and there, in the highway aforesaid, unlawfully and maliciously break the back of the said last mentioned horse, so drawing the said chariot as aforesaid, and by the violent force with which the said cart then and there came to and against the said chariot as aforesaid, he the said E. P. did then and there endeavour\* to overturn the said chariot, in which the said E. L. then and there was as aforesaid, by means whereof the said E. L. then and there was grievously hurt, bruised and wounded, and other wrongs, &c. [*Second count for a common assault as ante 821.*]

For an assault and presenting a loaded gun and threatening to fire it whereby prosecutor was affrighted. (m)

Surry, to wit. That J. C. late of, &c. with force and arms, to wit, with guns, swords, staves and fists, at, &c. aforesaid, in and upon one T. H. in the peace of God and our said lord the king then and there being, did make an assault, and him the said T. H. then and there did beat, wound and ill treat, so that his life was thereby then and there greatly despaired of, and then and there levelled and pointed at the said T. H. a certain gun, which he the said J. C. then and there held in his hand loaded, to wit, with gunpowder and lead balls; and then and there with the said gun so levelled and pointed at the said T. H. to shoot the said T. H., and then and there, thereby put the said T. H. in danger of his life, and then and there, by means of the premises aforesaid greatly terrified and affrighted the said T. H. and then and there did, &c. [*Second count for common assault as ante 821 only instead of saying "did beat," &c. whereby, &c. say "did greatly terrify, &c. and affright."*]

For a violent assault and wounding the plaintiff with a bayonet. (n)

2nd count. And the jurors, &c. do further present, &c. in

(l) See other precedents, C. C. Wentw. 70.  
C. 7th Ed. 170.

(n) From Mr. J. Ashurst's Paper  
Book, 24 vol. 168.

(m) See a similar precedent, 4

and upon the said P. C. C. then and there being in the peace of God and our said lord the king, violently, wickedly and maliciously did make an assault, and him the said P. C. C. did then and there beat, wound and ill treat, so that his life was greatly despaired of; and that he the said J. M. with a certain drawn weapon called a bayonet, which was then affixed to a certain musket which he the said J. M. in both his hands then and there had and held, in and upon him the said P. C. C. did make an assault and did give to him the said P. C. C. one grievous and dangerous stroke and blow, in and upon the left side of the head of him the said P. C. C. of which said blow and stroke so given to him the said P. C. C. in and upon the left side of his head, by him the said J. M. as aforesaid, he the said J. M. did then and there give to the said P. C. C. in and upon the left ear of him the said P. C. C. one grievous and dangerous wound of the length of one inch, and of the depth of two inches, by means whereof he the said P. C. C. did then and there lose a great quantity of blood, and by the said wound so as aforesaid given to him the said P. C. C. in and upon his left ear, he the said P. C. C. from the said wound in and upon his left ear then and there lost a great quantity of blood, to wit, &c. and upwards, and was then and there\* put in great peril and danger of losing his life, and did then and there labour under great pain and anguish for a long time, insomuch that his life was then and there greatly despaired of, and other wrongs to him the said P. C. C. he the said J. M. then and there unlawfully, violently, wickedly and maliciously did, to the great damage of him the said P. C. C. in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. [\*827]

[*After stating the assault as ante 821 to the words "in the peace of," &c. proceed as follows.*] And the said J. B. then and there unlawfully, violently and injuriously, did seize, and take from and out of the custody of the said W. Y. and against his will and consent, a certain receipt, bearing date the same day and year aforesaid, purporting to be a receipt of one V. W. that did acknowledge to have received of Mr. R. S. by the hands of T. H. three pounds eighteen shillings, for a debt due to him the said Valentine Hinckley, in full of all demands, and the same receipt the said J. B. then and there unlawfully and wilfully did keep in his possession, and other wrongs to the said W. Y. then and there unlawfully did, to the great damage of the said W. Y. and against the peace, &c. [Second count for a common assault as ante 821.]

That J. R. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in and upon one J. D. doctor in divinity, (then For a violent as-

(o) See a similar precedent, 6 personal property. Went. 435. Post Offences against

sault on a clergyman. (p)  
First count for a violent bruizing with fists, &c.

Second count, stating a like injury, whereby the prosecutor was prevented from doing his duty as clerk, &c.  
[828\*]

and there being a clerk or clergyman of the church of England, in holy orders, and in the peace of God and our said lord the king) and him the said J. D. then and there did beat, bruise, wound and ill treat, so that his life was greatly despaired of, and that the said J. R. then and there with both his fists gave and struck the said J. D. very many grievous blows and strokes in and upon his head, neck, face, eyes, arms, breast and other parts of his body, and with the right hand of him the said J. R. then and there greatly cut, bruised and wounded, the left eye-brow of the said J. D. insomuch that the left eye of the said J. D. was greatly inflamed, injured and discoloured, and the sight thereof much impaired for a long time, to wit, for the space of three weeks then next following; and the said J. D. by means of the premises became sick, weak and distempered, and remained and continued so sick, weak and distempered, for a long time, to wit, for the space of one month then next ensuing, and during all that time underwent and suffered great pain, torture and anguish of body and mind, and other wrongs, &c. and against the peace, &c. And the jurors, &c. that the said J. R. afterwards, to wit, on the said, &c. with force\* and arms, at, &c. aforesaid, in and upon the said J. D. (then and there being a clerk or clergyman of the church of England in holy orders, and in the peace of God and our said lord the king) and him the said J. D. then and there did beat, bruise, wound and ill treat, so that his life was greatly despaired of; and that the said J. R. then and there with both his fists gave and struck the said J. D. many very grievous blows and strokes in and upon his head, neck, face, eyes, arms, breast and other parts of his body, and with the right hand of him the said J. R. then and there greatly cut, bruised and wounded the left eye-brow of the said J. D. insomuch that the left eye of him the said J. D. was greatly inflamed, injured and discoloured, and the sight thereof much impaired a long time, to wit, for the space of three weeks then next following, and the said J. D. by means of the said last mentioned premises became sick, weak and distempered for a long time, to wit, for the space of one month then next ensuing, and during all the time last aforesaid, not only underwent and suffered great pain, torture and anguish of body and mind, but was also prevented and hindered from doing and performing the sacred duty of his function as a clergyman of the church of England, which he otherwise would and ought to have done, and other wrongs, &c. [*Third count for a common assault, as ante 821.*]

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(p) See another precedent, Cro. C. A. 407.

[As ante 821 to the asterisk.] And her the said C. D. then and there did beat, wound and ill treat, and one brass candlestick at, towards and against the said C. D. then and there did cast and throw with intention to strike, bruise, wound and hurt the said C. D. with the said candlestick, and that the said A. B. then and there, with force and arms, with a certain ch<sup>r</sup>ir, did strike the said C. D. divers terrible, grievous and dangerous blows upon the head, arms, sides, back and other parts of the body of her the said C. D. and thereby grievously cut, bruised and wounded the said C. D. in and upon her head, arms, sides, back and other parts of her body, insomuch that her life was greatly despaired of, with an intent, her the said C. D. then and there feloniously, wilfully and of his malice aforethought, to kill and murder, and other wrongs, &c.

Third count for a common assault. For an assault with intent to murder. (q)

[As ante 821 to the asterisk.] That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, with a certain drawn sword, which he the said A. B. in his right hand then and there had and held, in and upon one S. W. in the peace of God and our said lord the\* king, then and there being, did make an assault with an intent him the said S. W. then and there feloniously, wilfully and of his malice aforethought, to kill and murder, and other wrongs, &c. [Second count for a common assault as ante 821.]

For an assault with a drawn sword with intent to murder. (r) [\*829]

[As ante 821 to the asterisk.] And him the said G. M. then and there did beat, bruise, wound and ill-treat, so that his life was greatly despaired of, and that the said J. H. with a certain large stick, then and there gave and struck the said G. M. many violent and grievous blows and strokes in and upon his head, neck, arms, breast and other parts of his body, and did with both hands of him the said J. H. then and there unlawfully, wickedly, maliciously and violently cast, push, fling and throw the said G. M. into a certain pond there situate and being, wherein there then was a large quantity of filthy water and mud, and did then and there keep, press down, and confine the said G. M. in and under the said water and mud for a long space of time, to wit, for the space of five minutes then next following, with intention him the said G. M. then and there feloniously, wilfully and of his malice aforethought, to suffocate and drown in the said water and mud, and him the said G. M. by means thereof to

For an assault and casting in a pond of water with intent to suffocate. (s)

(q) See other precedent, Cro. C. C. 62.

have amounted to manslaughter only, the defendant will be acquitted on the first count, see note, 1 East P. C. 411.

(r) See other precedent, Cro. C. C. 62. Cro. C. A. 1. If upon evidence it appear that the offence (if the party had been killed) would

(s) See other precedents, Cro. C. C. 62. 2 Starkie 392.

kill and murder, by means of which said casting, pushing, flinging and throwing of him the said G. M. into the said pond, as aforesaid, and keeping, pressing down and confining the said G. M. in and under the said water and mud as aforesaid, he the said G. M. was then and there grievously hurt and bruised in his body, and in great danger of being suffocated in the said water and mud there, and other wrongs, &c.

For cruelly beating and ill treating a parish apprentice, and keeping her from necessary food. (t)

First count for stripping the apprentice, whipping her, and compelling her work without victuals.

[\*830]

Second count for an assault and compelling the apprentice to go naked into a frozen rivulet.

[Commencement as ante 821.] In and upon one E. O. a female child of the age of ——— years, or thereabouts, being the servant and apprentice of the said A. B. and in the peace of God and our said lord the king, then and there also being, did make an assault, and with two certain rods, whips, sticks and cords, her the said E. O. did then and there violently, cruelly and immoderately, beat, scourge and strike, and did then and there pull, and strip, and force, and compel the said E. O. to pull and strip from off the body of her the said E. O. certain clothes and wearing-apparel, wherewith the said E. O. was then and there clothed and covered, so that the said E. O. was then and there naked and uncovered, and her the said E. O. as well whilst she was so covered and clothed with the said clothes and wearing-apparel as whilst she was so naked and uncovered, did force and compel\* to work and labour violently, immoderately and beyond her strength in the business of the said A. B. for the space of thirteen hours then next following; and the said E. O. so working and labouring, as aforesaid, did then and there shut up, confine, and keep in a certain room there for all the time aforesaid, without giving or affording to her the said E. O. or permitting her to have sufficient meat, drink and food, for her nourishment and support during that time; and such assaulting, beating, scourging, striking and otherwise ill-treating her the said E. O. in manner and form aforesaid, he the said A. B. on fifty other different days then next following at, &c. aforesaid, did barbarously, cruelly, and inhumanly, repeat and reiterate in, upon and against the said E. O. with an intent her the said E. O. then and there feloniously, wilfully and of his malice aforethought, to kill and murder, and other wrongs, &c. In and upon the said E. O. then and there being such infant and the servant and apprentice of the said A. B. as aforesaid (and in the peace of God and our said lord the king, then and there also being) did make an assault, and did then and there by and with divers threats and menaces force, compel and oblige the said E. O. to go into a certain rivulet there, (she the said E. O. then and

(t) From Cro. C. C. 8 Ed. 63 137. and post Index "Apprentice." Starkie, 395. 2 Camp. 650. 1 Leach, ante 777.



there being naked, and the water of the said rivulet then and there being frozen and very cold) and did force and compel the said E. O. so being naked in the said rivulet, to wash her body in the water of the said rivulet, to the great pain and torture of the said E. O. and to the great damage and impoverishment of her health and strength of body with an intent her the said E. O. by the means last aforesaid, then and there feloniously, wilfully and of his malice aforethought, to kill and murder, and other wrongs, &c. In and upon the said E. O. then and there being such infant and the servant apprentice of the said A. B. as aforesaid, and in the peace of God and our said lord the king then and there also being, did make an assault, and did then and there take and hold the said E. O. so near to a certain large fire then burning there, that the said E. O. thereby became and was grievously burnt, scorched and hurt, and did then and there dash, fling, push and throw the said E. O. with great force and violence to, upon, and against the ground there, and thereby greatly hurt, crushed, bruised and wounded the said E. O. in and upon her head, neck, arms, sides, back and other parts of her body, whereby the said E. O. became sick, weak, languid and distempered, and remained and continued so sick, weak, languid and distempered, for a long time; to wit, from thence until the day of taking of this inquisition, and other wrongs, &c.

Third count for holding the apprentice near to a large fire and scorching her, and throwing her against the ground.

That E. R. the wife of S. R. unlawfully and maliciously contriving and intending to hurt and injure one E. W. being a servant to\* her the said E. R. and an infant of tender years, to wit, of the age of ten years, and under the control of the said E. R. heretofore, to wit, on, &c. and on divers other days and times, as well before as after that day, with force and arms, at, &c. unlawfully, wilfully and maliciously, did omit, neglect and refuse to provide for and give and administer to the said E. W. sufficient meat and drink necessary for

For not providing sufficient food for servant of tender age. (u) [\*831]

(u) This was the indictment against Elizabeth Ridley, from 2 Campb. 650. In the original there was no averment that the child was of tender years, and under the control of the defendant; and as no evidence could be given of actual ill usage, by exposure to the weather or otherwise, the prosecutor consented to an acquittal, for Mr. Justice Laurence held, that unless the servant was of tender years, and under the control of the party, the neglect to supply her with food would be a mere breach of contract; and, as

she might leave the service, remonstrate, or complain to a magistrate, no indictment could be supported; but he thought that if the infant be of tender years, and so under the dominion of the defendant as to be unable to take any steps to relieve herself, a nonfeasance respecting her would be an indictable offence. And this would appear from the case in which it has been holden murder in a master, if his apprentice die for want of food, 1 Leach, 137. The allegation of tender age and control is therefore material.

the sustenance, support, and nourishment of the body of her the said E. W. and did then and there expose the said E. W. to the cold and inclemency of the weather, as well within as without the house wherein she the said E. R. then dwelt, and keep the said E. W. without sufficient and proper warmth necessary for the health of her the said E. W. to wit, at, &c. the said E. W. on the several days and times, and during all the time aforesaid, living separately and apart from the said S. R. her husband, to wit, at, &c. contrary to the duty of her the said E. R. as the mistress of the said E. W. by reason of all which premises she the said E. W. afterwards, to wit, on, &c. became, and was, and for a long time, to wit, the space of six months then next following, continued to be very weak, sick and ill, and greatly consumed and emaciated in her body, to wit, at, &c. aforesaid, to the great damage of the said E. W. in contempt, &c. to the evil example, &c. and against the peace, &c.

For assaulting a woman quick with child, so that the child was brought forth dead. (w) [\*832]

That J. H. late of the parish of St. Sepulchre, in the county of Middlesex, yeoman, on the fourth day of April, in the twenty-first year of the reign of our sovereign lord George the Third, King of Great Britain, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon M. the wife of one W. E. in the peace of God and our said lord the king, then and there being big with a quick child, did make an assault, and her the said M. then and there did beat, wound and ill treat, so that her life was greatly despaired\* of, by reason whereof she the said M. afterwards, to wit, on the twenty-ninth day of the same month of April, in the year aforesaid, at the parish of St. Sepulchre aforesaid, in the county aforesaid, did bring forth the said child dead, and other wrongs to the said M. then and there did, to the great damage of the said W. E. and M. his wife, and against the peace, &c. And the jurors aforesaid, &c. [*Another count for a common assault as ante 821.*]

For assaulting one of the collectors of a turnpike in the execution of his office. (x)

In and upon one J. D. (then and there being one of the collectors and receivers of the monies payable, by virtue of a certain act of parliament, made in the thirteenth year of the reign of his present majesty King George the Third, intituled "An Act to explain, amend and reduce, into one act of parliament, the general laws now in being for regulating the turnpike roads in that part of Great Britain called England; and for other purposes," and in the peace of God and our said lord the now king, and in the execution of his said office then and there also being) did make an assault, and him the said J. D. then and there did beat, wound and ill treat, so that his

(w) See other precedents, Cro. C. C. 64. Starkie, 386.

(x) See similar precedents, Cro. C. C. 60. 2 Starkie, 393.

life was greatly despaired of, and other wrongs, &c. against the peace, &c. [*Second count for a common assault as ante 821.*]

That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in and upon one J. W. (then being one of the constables (z) of the said parish of St. Dunstan in the West, in the said county of Middlesex, in the peace of God and our said lord the king, and in the due execution of his said office then and there also being) did make an assault, and him the said J. W. then and there did beat, wound and ill treat, so that his life was greatly despaired of, and other wrongs to the said J. W. then and there did, to the great, &c. [*Second count for a common assault as ante 821.*]

For assaulting a constable in the execution of his office. (y)

That A. B. late of, &c. and C. D. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in the manor of —, into a certain field and close of and belonging to W. S. there lying and being, unlawfully and injuriously did enter, and in and upon one E. F. (then being gamekeeper of the said manor, duly deputed, authorised and appointed by G. H. esquire, then and yet lord of the manor aforesaid) and in the peace of God and our said lord the king, and in the due execution of his duty as gamekeeper of the said manor then and there also being, did make an assault, and him the said E. F. then and there did beat, wound and ill treat, so that his\* life was greatly despaired of, and other wrong, &c. [*Second count for a common assault as ante 821*]

For assaulting a gamekeeper in the execution of his duty. (a)

[\*833]

That S. E. of &c. on, &c. at, &c. did, by playing at dice,

On 9 Ann. c. 14.

For an assault and battery on account of money won at play. (b)

(y) See similar precedents, Cro. C. C. 60. 2 Starkie, 385.

(z) This is a sufficient allegation that he was a constable, and the allegation would be satisfied by evidence, that he acted as such; see 2 Leach, 515. 4 T. R. 607. 5 T. R. 607. 3 T. R. 632.

(a) See other precedents, Cro. C. C. 61. Starkie, 391.

(b) See 4 East 175. 2 Starkie. 407. East P. C. 423. The 9 Ann c. 14. s. 8. enacts, that in case any person or persons whatsoever, shall assault and beat, or shall challenge or provoke to fight any other person or persons whatsoever, upon account of any money won by gaming, playing or betting at any of the games therein mentioned, or other game or games whatsoever, such person or persons upon the account aforesaid, shall, being thereof convicted upon an indictment or information, forfeit all his goods, chattels, and

personal estate, and suffer imprisonment in the common gaol of the county in which such conviction shall be had, during the term of two years. The above was the indictment against Hill Darley, on which he was convicted. In this case the assault was not committed at the time of playing, nor indeed until the day after; and the case of Randall and others, 1 East P. C. 423. was cited on behalf of the defendant, were it was holden, that the quarrel must arise at the time when the money was won; but the court dissented from that opinion, and as it appeared it had been left to the jury to say whether the dispute had arisen on account of the money won at play, or the abusive language used in demanding it overruled the objection. It was also objected, that as the punishment on the two first counts was specific, and on the last, discretionary the joinder was improper; but

(c) win of C. D. late of, &c. fifty pounds, and that the said S. E. having so won the said sum by playing at Dice as aforesaid, the said C. D. afterwards, on, &c. with force and arms, at, &c. aforesaid, did assault and beat the said S. E. upon account of the said money so won by the said S. E. playing at dice as aforesaid, contrary to the form of the statute, &c. and against the peace, &c. [Second count that the money was won "by betting on playing dice." Third count for a common assault as ante 821.]

The like  
in a more  
concise  
form. (d)

[After stating the assault as ante 821. proceed as follows:] And then and there did beat the said C. D. on account of money then and there won by the said C. D. from him the said A. B. by then and there gaming and playing at dice, to the great damage, &c. against the form, &c. and against the peace, &c.

On 6 Geo.  
I. c. 28.  
For as-  
saulting a

person on  
the high-  
way, and  
spoiling,  
cutting,  
and defac-  
ing her  
garments  
and  
clothes. (e)

That A. B. late of, &c. on, &c. at, &c. in a public street and highway there, called Holborn, in and upon one E. M. spin-

this ground was abandoned by the defendant's counsel, and he received judgment for the statutable penalties, 4 East Rep. 174.

(c) It has been suggested, that it is not necessary or advisable to state the game, 2 Stark. 407. n. 1.

(d) See 2 Stark. 408.

(e) other precedents, Cro. C. C. 67. Starkie, 405. 1 Leach, 529.

This offence is founded on 6 Geo. I. ch. 23. s. 11. which enacts, "That if any person or persons shall, at any time or times, from and after the twenty-fourth day of June, in the year of our Lord one thousand seven hundred and twenty, wilfully and maliciously assault any person or persons, in the public streets or highways, with an intent to tear spoil, cut, burn or deface and shall tear, cut, burn or deface, the garments and clothes of such person or persons, that then all and every such person or persons so offending, being thereof lawfully convicted, shall be and be adjudged guilty of felony, and every such felon shall be subject and liable to like pains and penalties as in cases of felony; and the courts by and before whom he, she, or they shall be tried, shall have full power and authority of transporting such felons for the space of seven years." The occasion on which this act was passed, was singular: on the introduction of Indian fashions in this country, the silk weavers, consider-

ing they would be detrimental to their manufacture, made it a practice to tear and destroy the clothes which were of a different texture from the article which they wove; and this 6 Geo. I. was made to put a stop to such practices, 1 Leach, 534.

To constitute an offence under it, it is necessary that the assault should be made, 1st. in a public street or highway; 2ndly. that it be made wilfully and maliciously; 3dly, that it be with intent to tear, spoil, cut, burn or deface, the garments or clothes of the person against whom it is directed; and 4thly. that such tearing, spoiling, cutting, burning or defacing be actually effected, 1 Leach 531. It has been laid down that if the intent be to cut both the clothes and the person, the case is within the meaning of the act, and that if the principal design be to cut the person, and, in its execution, the clothes must necessarily be rent, this also will support the proceedings. But the majority of the judges thought otherwise: they considered that the primary intent must be to injure the clothes, as the legislature never contemplated the wounding. 1 Leach, 529. To this decision the case of Coke and Woodbourn, 6 Harg. St. Tr. 804. seems contrary: in that case the defendants were indicted under the Coventry Act, and they were convicted of cutting with intent to disfigure, though

ster, in the peace of God and our said lord the king, in the said public street\* and highway then and there being, wilfully, maliciously and feloniously, did make an assault, with an intent wilfully and maliciously\* to tear, spoil, cut and deface the garments and clothes of her the said E. M. and, with force and arms, did in the said public street and highway then and there wilfully, maliciously and feloniously, tear spoil, cut and deface one printed linen gown of the value of thirty shillings, of the goods and chattels of the said E. M. being part of the garments of her the said E. M. on her person then and there in wear, to the great damage, &c. against the form, &c. and against the peace.

[\*834]

[\*835]

## INDICTMENTS FOR ASSAULTS AND FALSE IMPRISONMENT.

Middlesex. The jurors for our lord the king upon their oath present, that A. B. late of the parish of L. in the county of M. yeoman, on the — day of — in the — year of the reign of our sovereign lord George the Third, by the grace of God, of the united kingdom of Great Britain and Ireland, king, defender of the faith, with force and arms, at the parish aforesaid, in the county aforesaid, in and upon one M. D. in the peace of God and our said lord the king then and there being, did make an assault, and him the said M. D. then and there did beat, wound and ill treat, so that

For an assault and false imprisonment. (f)

their design was doubtless to kill. And this seems reasonable, where the intent to commit the higher offence, necessarily implies the less atrocious. Some argument might perhaps be drawn from an analogy to the cases of murder, were the defendant may be found guilty of killing with malice aforethought, though the original design were to commit a different felony. And as the case in question was decided, partly at least, on a defect in the indictment, it does not appear conclusive.

The *Indictment* must charge the assault and the actual injury to the clothes at the same time, as the statute is framed in the conjunctive, 1 Leach, 534. And therefore it will not suffice to state that the defendant cut the dress on the same day and year on which the attack was made, because they might be

on different parts of the same day, when the requisites of the statute would not be satisfied: but this may be done by the words *then and there*, which sufficiently imply that the assault and cutting were continuous, 1 Leach, 534. In the case of the *King v. Williams*, 1 Leach, 528. in which those points arose, on the acquittal of the defendant he was detained and indicted for the offence as a misdemeanour, at common law; and, on his conviction of three distinct outrages, received sentence of two years' imprisonment on each, and at the end of that time to find sureties for his good behaviour for seven years.

(f) See similar precedents, Cro. C. C. 61. Starkie 385. As to the offence see Com. Dig. Imprisonment. L. 1. 1 Bla. Rep. 19. 1 East P. C. 428.

his life was greatly despaired of; and him the said M. D. then and there unlawfully and injuriously, against the will and without the consent of the said M. D. and also against the laws of this realm, without any legal warrant, authority or justifiable cause whatsoever, did imprison and detain, for a long time, to wit, for the space of, &c. then next following,\* and other wrongs to the said M. D. then and there did to the great damage of the said M. D. and against the peace of our said lord the king, his crown and dignity. [*Second count for a common assault as ante 821.*]

For the like, and obtaining five guineas for discharging. (g)  
For the like, and obtaining a note for discharging. (h)

\*836

Against a commander in chief of one of the East India provinces for an assault and imprisoning the prosecutor there for ten months. (i)

[*The same as above unto the asterisk, and then proceed as follows:*] And until he the said M. D. had paid to him the said A. B. the sum of five pounds and five shillings of the monies of the said M. D. for his enlargement and other wrongs, &c.

[*The same as above unto the asterisk, and then proceed as follows:*] And until he the said M. D. in order to obtain his release and discharge from the said imprisonment was forced and obliged by the said A. B. to sign and give, and did sign and give to the said\* A. B. a note under the hand of the said M. D. whereby he the said M. D. promised to pay to the said A. B. the sum of one hundred pounds, and other wrongs, &c.

That Sir R. B. late of, &c. knight, was heretofore employed in the East Indies, in the service of the united company of merchants of England trading to the East Indies, commonly called the "East India Company," in a military capacity, that is to say, as commander in chief of the said company's forces at the fortress of Allahabad, in the province of Allahabad, in the East Indies, and that the said R. B. during the time that he was so employed, to wit, on, &c. was guilty of an offence against one T. D. one of his majesty's subjects, beyond the seas in the East Indies aforesaid, to wit, within his jurisdiction, that is to say, at, &c. aforesaid, for that he the said R. B. then and there with force and arms, to wit, with swords, staves and sticks, in and upon the said S. D. in the peace of God and our said lord the king then and there being, did make an assault, and him the said T. D. did beat, wound and ill treat, so that his life was greatly despaired of, and him the said T. D. then and there with force and arms, unlawfully, injuriously, oppressively and against the will of him the said T. D. and against the laws of that part of Great Britain called England, without any legal warrant or authority, and without any reasonable or probable cause whatsoever, did imprison and detain in prison for a long space of time, to wit, for the space of ten months then

(g) See similar precedents, Cro. C. C. 62. Starkie 385.  
C. C. 62. Starkie, 385.

(i) See a similar precedent, 4  
(h) See similar precedents, Cro. Wentw. 60.



next following, that is to say, at Westminster, in the county of Middlesex, and other wrongs, &c. And the jurors, &c. do further present, that the said Sir R. B. was heretofore in the East Indies in the service of the united company of merchants of England trading to the East Indies, commonly called the "East India Company," in a military capacity, that is to say, as commander in chief of the said company's forces at the fortress of Allahabad, in the province of Allahabad in the East Indies, and that the said Sir R. B. during the time that he was so employed, to wit, on, &c. was guilty of an offence against the said T. D. one of his majesty's subjects beyond the seas, in the East Indies aforesaid, to wit within his jurisdiction, that is to say, at Allahabad, aforesaid, and also at Moughier in the province of Bahaar, in the East Indies, and at Calcutta in the East Indies, for that he the said Sir R. B. then and there, that is to say, at Allahabad aforesaid, with force and arms, to wit, with swords, staves and sticks, in and upon the said T. D. in the peace of God and of our said lord the king then and there being, did make an assault, and him the said T. D. did\* then and there beat, wound and ill treat, so that his life was greatly despaired of, and him the said T. D. then and there, with force and arms, wrongfully, unlawfully, injuriously and oppressively, against the will of the said T. D. and against the laws of that part of Great Britain called England, without any legal warrant or authority, and without any reasonable or probable cause whatsoever, did imprison and detain in prison for a long time, to wit, for the space of ten months then next following, that is to say, for a part of the time aforesaid, to wit, for the space of one month at Allahabad aforesaid, for other part of the time aforesaid, to wit, for the space of six months at Moughier aforesaid, and for the residue of the time aforesaid, at Calcutta aforesaid, to wit, at W. in the county of M. and other wrongs, &c. &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Sir R. B. was heretofore employed in the East Indies in the service of the united company of Merchants of England, trading to the East Indies, commonly called the "East India Company," in a military capacity, that is to say, as colonel and commander of the third brigade of the said company's military on the Bengal establishment at Allahabad aforesaid, and that the said Sir R. B. during the time that he was so employed, to wit, on, &c. was guilty of an offence, &c. [*The same as the first count to the end. Fourth count same as the second, except as to the stating the military capacity of the defendant, which must be stated as in the third count.*] And the jurors, &c. do further present, that the said Sir R. B. heretofore, to wit, at the time of commit-

Second count, laying the offence at two places.

[\*837]

Third count.

Fifth count.

Ninth  
count.

[\*838]

ting the grievances hereinafter mentioned, in the East Indies, claimed power and authority from the united company of Merchants of E. trading to the East I. commonly called the "East India Company," that is to say, as commander in chief of the said company's forces, at the fortress of Allahabad in the province of Allahabad in the East Indies, and that the said Sir R. B. during the time that he so claimed such power and authority, to wit, on, &c. was guilty of an offence against the said T. D. &c. *[as in the first count to the end. The sixth, seventh and eighth counts, same as the second, third, and fourth respectively, with the same variations respectively between them as between the first and fifth.]* And the jurors, &c. present, that the said Sir R. B. heretofore, that is to say, at the time of the committing the grievances hereinafter mentioned in the E. I. claimed power and authority from certain of his majesty's subjects then residing in I. that is to say, from H. E. esq. then president of F. W. in B. in the E. I. one of the principal settlements in the E. I. of the said united company of merchants of E. trading to the E. I. commonly called the E. I. company, R. S. esquire,\* then one of the said company's council at F. W. in B. aforesaid, C. F. esquire, then one of the said company's council at F. W. in B. aforesaid, J. A. esquire, then one of, &c. R. B. esquire, then one of, &c. A. J. esquire, then one of, &c. C. R. esquire, then one of, &c. W. A. esquire, then one of, &c. T. K. esquire, then one of, &c. that is to say, as commander in chief of the said company's forces at the fortress of A. in the province of A. in the E. I. and that the said Sir. R. B. during the time that he claimed such power and authority as last aforesaid, to wit, on, &c. *[as in first count. The tenth, eleventh and last counts, the same as second, third and fourth respectively, with the said variations respectively between them, as between the first and ninth.]*

For an assault, false imprisonment, and demanding of the prosecutor either to sign a note for payment of money, or to fight a duel. (k) First count for an imprisonment, and de-

That W. L. late of, &c. being a person of a wicked and malicious mind, and of an unruly and turbulent temper and disposition, and having no regard for the laws of this realm, but unlawfully and wickedly conceiving great hatred, malice and ill will against one T. S. an honest and peaceable subject of our said lord the king, and devising, contriving, and intending to irritate and provoke the said T. S. to fight a duel with him the said W. L. and thereby to cause him the said T. S. to break and disturb the peace of our said lord the king, on, &c. with force and arms, at, &c. aforesaid, in and upon him the said T. S. in the peace of God and our said lord the king then and there being, did unlawfully, violently and maliciously make an assault, and him the said T. S. then

(k) See similar precedents Cro. C. A. 12.

and there, against his will, and without his consent, and also without any legal warrant or authority, and without any reasonable or probable cause whatsoever, and contrary to the laws of this realm, did imprison him, and detain in prison for a long space of time, to wit, for the space of two hours then next following; and that the said W. L. then and there, in a threatening, challenging, and provoking manner did demand and insist that he the said T. S. should sign a certain note for the payment of money, or that he should fight a duel with him the said W. L. and that the said T. S. having then and there refused to sign the said note, or to fight with him the said W. L. he the said W. L. did then and there immediately, with a threatening and menacing gesture, point and present a certain pistol loaded with gunpowder and leaden bullets, at him the said T. S. and declare that he would fire the said pistol at him the said T. S. if he the said T. S. would not take a certain other pistol loaded as aforesaid, (meaning for the purpose of fighting a duel with him the said W. L.) and that his the said T. S.'s not taking the said other pistol should not prevent him the said W. L. from firing at him the said T. S. to the great\* damage, danger, terror and affrightment of the said T. S. in contempt, &c. in violation of the public peace, good order and tranquility of this kingdom, to the evil and pernicious example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said W. L. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, in and upon him the said T. S. in the peace of God and our said lord the king, then and there being, did unlawfully and violently make an assault, and that he the said W. L. did then and there unlawfully, wickedly and maliciously point and present a certain pistol, loaded with gunpowder and leaden bullets, at him the said T. S. and did then and there threaten that he the said W. L. would shoot him the said T. S. with the said pistol so loaded as last aforesaid, and other wrongs to the said T. S. then and there did to the great damage, &c. in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said W. L. being such person as aforesaid, afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, did unlawfully, wickedly and maliciously challenge, and endeavour to provoke him the said T. S. to fight a duel with him the said W. L. in contempt, &c. in violation of the public peace, good order, and tranquility of this kingdom, to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said W. L. afterwards to wit, on the said, &c. with force and arms, at, &c. aforesaid, in and upon the said T. S. in the peace of God and our said lord the king then

manding  
of the pro-  
secutor to  
sign a  
note, or to  
fight a du-  
el, and  
threaten-  
ing to  
shoot him.

[\*839]

Second  
count for  
pointing a  
pistol at  
the prose-  
cutor and  
threaten-  
ing to  
shoot him.

Third  
count for a  
challenge.

Fourth  
count for  
common  
false im-  
prison-  
ment.

and there being, did unlawfully and violently make an assault, and him the said T. S. then and there, against the will, and without the consent of him the said T. S. and without any legal warrant or authority, and also without any reasonable or probable cause whatsoever, and contrary to the laws of this realm, unlawfully did imprison, and detain in prison for a long time, to wit, for the space of two hours then next following, and other wrongs, &c. [*Fifth count for a common assault, as ante 821.*]

For assaulting, menacing with loss of life, seizing and throwing into dark dungeon in Exeter Castle, and keeping him imprisoned there.

(l)

[\*840]

Devonshire, to wit. That J. A. late of, &c. H. H. and J. N. late of, &c. yeoman, on, &c. with force and arms, at, &c. aforesaid, the dwelling house of one J. H. there situate and being, in a riotous manner, unlawfully and injuriously broke and entered, and in the said dwelling house for a long time, to wit, for the space of one hour then next following, unlawfully, and against the will of the said J. H. stayed and continued, and during all the said time made a great noise and disturbance therein, and greatly terrified and frightened the said J. H. and S. the wife of the said J. H. and then and being in the said dwelling house, and in and upon\* the said J. H. then and there being in the peace of God and of our said lord the now king, in the same dwelling house, with force and arms, to wit, with guns, swords and pistols, bayonets, and other dangerous and offensive weapons, did make an assault, and him the said J. H. did then and there beat, bruise, kick and wound, and evilly treat, so that his life was greatly despaired of, and him the said J. H. with loss of life, member, and other bodily harm, did then and there vehemently threaten and menace, and did then and there unlawfully, injuriously and against the will of the said J. H. and without any legal warrant or authority in that behalf, seize, take and drag, and forcibly carry the said J. H. from and out of his dwelling house in the parish aforesaid, in the county aforesaid, and him the said J. H. to a certain place called the castle of E. in the county aforesaid, and him the said J. H. to the castle of E. aforesaid, in a certain dark and loathsome place and dungeon there did unlawfully and injuriously put, cast, throw and imprison, and kept and detained him so imprisoned for a long space of time, to wit, for the space of twenty-four hours next following, and other injuries to the said J. H. then and there did, to the damage of the said J. H. and against the peace, &c. [*Second count for assault and imprisonment as ante 835. Third count for a common assault, &c. as ante 821.*]

(l) See similar precedents 6 Wentw. 392.

(m) This was the indictment a-

gainst Stubbs, 29 Geo. III. from Mr. J. Ashurst's paper books, 21. vol. 1.

That T. S. late of, &c. yeoman, on, &c. at, &c. within the palace of our lord the now king, at W. aforesaid, in the said county of M. (our said lord the king then being actually resident, and abiding in his royal person in his said palace) with force and arms, to wit, with swords, clubs and other offensive weapons, in and upon one E. P. esquire, then and there being in the peace of God, and of our said lord the king, made an assault, and then and there beat, wounded and ill treated him, so that his life was greatly despaired of, and and then and there imprisoned him, and kept and detained him in prison for a long space of time, to wit, for the space of twenty-four hours, and then and there did other wrongs to the said E. P. to the great damage of the said E. P. to the great annoyance and disturbance of our said lord the king, in manifest contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said T. S. afterwards, to wit, on the said, &c. at, &c. aforesaid, within the palace of our said lord the now king, at W. aforesaid, with force and arms, to wit, with swords and other offensive weapons, made another assault upon the said E. P. then and there being in the peace of God and of our said lord the king, and then and there again beat, wounded, and\* ill treated him, so that his life was greatly despaired of, and then and there imprisoned him, and kept and detained him in prison for a long space of time, to wit, for the space of twenty hours, and then and there did other wrongs to the said E. P. to the great annoyance, &c. [*as before.*] And the jurors, &c. that the said T. S. afterwards, to wit, on the said, &c. at, &c. aforesaid, within the limits of the palace of our said lord the now king, at W. aforesaid, in the said county of M. with force and arms, to wit, with swords and other offensive weapons, made another assault upon the said E. P. then and there being in the peace of God and of our said lord the king, and then and there again beat and wounded and ill treated him, so that his life was greatly despaired of, and then and there imprisoned him, and kept and detained him in prison for a long space of time, to wit, for the space of twenty hours, to the great annoyance, &c. [*as before.*]

Indictment for an assault and false imprisonment within the palace. (m)

Second count

[\*841]

Third count

## INDICTMENTS FOR THREATS—AT COMMON LAW.

For ex-  
torting  
money  
under pre-  
tence of  
prosecut-  
ing for an  
unnatural  
crime (n)  
[842\*]

That W. W. late of, &c. being a person of an evil and dishonest mind, and wickedly and maliciously intending and contriving by wicked, unlawful and unjust means to obtain the monies of divers true and honest subjects of our said lord the king, for the maintenance and support of his evil course of living, and wickedly, unjustly\* and unlawfully contriving and intending to extort and procure a large sum of money from one S. M. on, &c. with force and arms, at, &c. aforesaid, unlawfully and unjustly, and with a most wicked design and intent to extort, acquire and obtain money from the said S. M. did falsely and wickedly charge and accuse one J. M. the son of him the said S. M. then and there being a good, true, faithful and honest subject of our said lord the king, with the most horrid and detestable crime of attempting to commit sodomy on him the said W. W. and did then and there unlawfully and wickedly menace and threaten the said S. M. that he the said W. W. would prosecute the said J. M. for such pretended offence, unless he the said S. M. would then and there give and deliver his promissory note in writing to him the said W. W. for the payment of 210*l.* for his forbearance to prosecute the said J. M. for the said supposed offence. And the jurors, &c. do further say, that afterwards, to wit, on the said, &c. at, &c. aforesaid, in prose-

(n) From Mr. J. Ashurst's paper books 19 vol. 34. If the note given in this case was written on the paper, &c. of the party injured, and was given immediately, there can be no doubt that the crime amounted to robbery. See ante post as to promissory notes, &c. being subjects of larceny. And even if time intervened, so that the prosecutor was not under the influence of fear, there is no doubt the attempt would be indictable as a misdemeanour at common law. But to make the attempt indictable as to constitute the offence robbery, the threat must be of such a nature as to overawe a firm and prudent man. Of this kind is clearly the threat laid in the above precedent, as will be seen by analogy to the cases of robbery. But to threaten to institute a prosecution to recover penalties under a penal

statute is not of this description, and no indictment will lie at common law, though it might under 18 Eliz. for regulating common informers, 6 East, 126. The case in which the next indictment arose is very distinguishable from this—there was an actual duress sufficient to have avoided a bond; and though in order to make such threats indictable there must be either actual force, or such a threat as common firmness is not capable of resisting; both need not concur, *id. ibid.* Almost all cases of this kind which do not amount to actual robbery, are now severely punished by statutes. See ante 807. Assaults with intent to rob, and post 843 as to threatening letters. When no indictment lies for threatening words and other threats, 2 Lord Raym. 857. 1 Sess. C. 213. 4 Bla. C. 201.



cution of his said malicious and wicked intent, and by means of his said wicked menaces and threats, he the said W. W. did then and there extort, obtain, and procure from the said S. M. a certain note in writing, subscribed with his own hand, whereby the said S. M. did promise to pay to the said W. W. the sum of 210*l.* in the proportions following, that is to say, the sum of 105*l.* part thereof on the fifth of April next after the making of the said note, and the remaining 105*l.* at Martinmas then following. Whereas in truth and in fact, he the said J. M. the son of the said S. M. never was guilty of the said pretended offence, or any other offence of the like nature, to the great damage of the said S. M. to the evil example, &c. and against the peace, &c.

That M. W., J. S. and W. J. unlawfully and fraudulently contriving and intending to cheat and defraud one P. S. of his money, on, &c. having the same P. S. in their custody imprisoned and detained by the color and pretence of a certain warrant by the said M. J. and W. J. then and there deputed by R. L. sheriff, assigned to keep the peace in the county of M. against the same P. S. unlawfully and unjustly laid such and so great threats upon him concerning the procuring him to be committed to the gaol of the queen at Newgate, and to be imprisoned in the same, and to stand in and on a pillory for perjury, mentioned in the warrant, unless he the said P. S. should pay to M. W. the sum of twenty shillings, and should give his writing for the payment of the sum of fifty shillings, to the said M. W. within fourteen days then next\* following, and also should give a general release to the same M. W. so that the same P. S. by the threats aforesaid, laid upon him as aforesaid, and for the obtaining of his liberty then and there was forced and obliged to, and then and there did give and pay to the said M. W. the sum of twenty shillings of lawful money, &c. and did then and there sign his certain writing for the payment of the sum of fifty shillings to the same M. W. within fourteen days then next following, and did then and there deliver the same to the said M. W. and did also then and there deliver a certain writing of general release of him the said P. S. to the said M. W. and other wrongs to the said P. S. then and there did, to the great damage of the said P. S. in contempt, &c. to the evil example, &c. and against the peace, &c.

For obtaining money by threatening to have the party imprisoned and pilloried for perjury.  
(o)

[\*843]

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(o) This was the indictment translated from 6 East, 133, in notes. against Woodward and others, See note to the last precedent.

## INDICTMENT FOR THREATENING LETTERS. FELONY ON STATUTES.

On 9 Geo.  
I. c. 22.  
for send-  
ing a

threaten-  
ing letter  
with a fic-  
titious  
name sub-  
scribed  
thereto,  
demand-  
ing, &c.

(p)

[\*844]

That A. B. late of, &c. on, &c. at, &c. knowingly, unlaw-  
fully, wickedly\* and feloniously, did send a certain letter in

(p) See other precedents, Cro. C. C. 84. Starkie 565. See a precedent under this act for forcibly rescuing a person from a constable charged with this offence ante 200. The *offence* is founded on 9 Geo. I. c. 22. usually called the Black Act, which provides that if any person shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name, demanding money, venison, or other valuable thing, or shall forcibly rescue any person in custody of any officer or other person, for this or other offence prohibited in the act, or shall by gift or promise of money or other reward, procure any of his majesty's subjects to join him in such unlawful act, he shall be guilty of felony without benefit of clergy. This provision was extended by 27 Geo. II. c. 15. which enacts, that if any person shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name or names, letter or letters, threatening to kill or murder any of the king's subjects, or to burn their houses, out houses, barns, stacks of corn and grain, hay or straw, though no money or venison nor other valuable thing shall be demanded in or by such letter or letters, or shall forcibly rescue any person being lawfully in custody of any officer or other person for such offence, shall be guilty of a capital felony. It will be observed that these provisions differ in this respect, that under the former something valuable must be demanded in the letter, and under the latter a threat only is requisite. Both acts refer only to "*sending*," and take no notice either of *writing* or *delivering* the letter. It has, therefore, been holden, that if a wife write a threatening letter and her husband deliver it, but there be no evidence that she gave it to him, he cannot be guilty in carrying or she

in writing, under these statutes; though the jury are at liberty to infer the fact of her *sending* from the evidence before them, in which case she might be found guilty, though her husband must be acquitted. 1 Leach 444. Whether a person dropping an anonymous letter in a place where it will be found by the person to whom it is addressed is guilty of sending, seems still uncertain. 2 East P. C. 1. 123. Under the Black Act, a letter signed with initials only, is a letter without a name within its meaning. 1 Leach 749. A bank note comes within the expression "valuable thing," though it could not have been so denominated when the act was passed, but was made so by a subsequent provision, *id. ibid.* And a letter threatening to impute the crime of murder to a man, unless he disposes of property in a certain way, is a sufficient demand to support the proceedings, *id. ibid.* As to what under the 27 Geo. II. c. 15. will amount to a threat to kill, or burn houses, &c. it has been ruled, that a letter accusing the prosecutor of the murder of one of the defendant's friends and, and threatening to revenge his death, is sufficient evidence to be left to the jury to determine whether a threat to murder was implied, 1 Leach, 142. But a letter threatening to set fire to the mill of the party to whom it is addressed, and to do him all possible mischief in his farms, when he is not the proprietor of any mill, will not be within the statute, for the general denunciation of mischief will not suffice, 2 East. P. C. 1115. And under both these acts, it has been holden that although no name be subscribed to a threatening letter, if the writer makes himself known in the body of it, or his hand writing is known to the prosecutor, he cannot be indicted under these statutes, for as there is no disguise,

writing, (*q*) signed with a fictitious name, that is to say, with the name of P. C.\* [or "*without any name subscribed thereto,*" (*r*) *according to the fact,*] directed to D. H., J. M. and B. T., by the names and descriptions of Messrs. H. M. and T. London, demanding money, (*s*) and which said letter is of the tenor following, that is to say, (*t*)

[\*845]

Manchester, March 31, 1812.

"Mr. H. if you are not acquainted of your partner J. M.'s transactions in M. I will inform you; upwards of nine years since he wanted to get J. M. a school-master out of his house, that he might build his warehouse, which has lately been burnt, but could not remove him as soon as he wanted; the following plan he pursued; about eleven years since my brother left Ireland and came to England, got into bad company, spent all his money, he and his companions took bad ways; my brother wanting money was prevailed on to set J. M.'s house on fire, which he did for the reward of twenty guineas; about nine years since my brother came home and soon after fell ill, he desired we would send for our priest and

though included in the words, he is not within their spirit, 1 Leach, 445. in notis, 2 East, P. C. 1116.

*The Indictment* must not only pursue the words of the statute, but must set forth the letter itself on which the prosecution is founded, 1 East P. C. 1122. And the defendant's intent must be correctly stated, 2 East P. C. 1124. An exact copy of the instrument must be set forth in words and figures to enable the court to judge whether it comes within the meaning of the legislature, 2 East P. C. 975, 6. 1 Marsh 522. 6 East, 418. The mode in which written instruments must be set forth, will be found discussed in 1 vol. 234, 5. and among the requisites of indictments for libel and forgery. The venue under 9 Geo. I. c. 22. s. 14. may be laid in any county in England, at the option of the party indicting; but the 27 Geo. II. c. 13. contains no such provision. Under this act the venue is well laid in the county where the letter is received by the prosecutor, though by the hands of an innocent person, or by the post, 1 Leach 143. 2 East P. C. 1125. And it should seem, by analogy to the case of letters to pro-

voke challenges, that the trial might well be had in the county where the letter was written in which it was sent, though received in another, 2 Campb. 506.

*Evidence* of prior and subsequent letters between the prisoner and the party threatened may be received to explain the intention of that on which the indictment is framed, 2 Leach 749. Proof that the defendant delivered the letter to another, by whom it was put into the post-office, is sufficient evidence to go to a jury who are to determine whether he was acquainted with its contents, 1 Leach 142.

(*q*) In Cro. C. C. 84. the date is stated thus, "bearing date the said, &c."

(*r*). In Cro. C. C. 84. "without any name subscribed and signed thereto."

(*s*) See ante 843. In Cro. C. C. 84. are here inserted, "to wit, three pieces of gold coin of this realm called guineas."

(*t*) The letter must be set forth ante 844. n. p. In Cro. C. C. 84. the form is "and which said letter is as follows, that is to say, &c."

another person to take down in writing his confession; he then in the presence of my father, myself, and brothers confessed that he was hired to set the place on fire, the day before he tore the lock off the school door, but was surprised when he came in the night to find the door fast, but he got an iron crow and forced the door open, he then went in, pulled the door after him, and then completed his infernal work; that being done, the next thing was to transport my brother to Ireland, accordingly a person was appointed, he went with him to Liverpool, and then saw him sail for Ireland in the packet; my brother, after this confession, received the Eucharist, and in less than forty-eight hours died; this, Sir, is his confession on oath, and after his death we have all bound ourselves to be revenged, and have sought and completed our revenge as you now find, by the same place, in a heap of rubbish; after this was completed I went back to Ireland to acquaint my father and brother what was done; we have again a second time mutually sworn to each other, never to cease until you have made J. M.'s loss good in a double fold; if you choose to do this immediately we will forbear, if not, evil will be always at your peace. P. C."

[\*846] Against\* the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. [*Second count describing the letter as demanding a certain valuable thing, that is to say, double the loss sustained by the said J. M. by a fire in the same letter mentioned and referred to, and which said last mentioned letter is of the tenor following, that is to say, &c. Third count, double the loss by the same letter pretended to have been sustained, &c.*]

### INDICTMENTS FOR THREATENING LETTERS. MISDEMEANOUR ON STATUTE.

For a misdemeanor, for sending a letter threatening to charge a capital felony, on 30 Geo. II. c. 24. (u)

That A. B. late of, &c. on, &c. at, &c. did knowingly send to one J. W. a certain letter, with the name of him the said

(u) See other precedents, Starkie, 564.

*Offence.* The 30 Geo. II. c. 24. s. 1. enacts that all persons who shall knowingly send, or deliver any letter or writing, with or without a name or names subscribed thereto, or signed with a fictitious name or names, letter or letters, threatening to accuse any person of any crime

punishable by law with death, transportation, pillory, or any other infamous punishment, with a view or intent to extort or gain money, goods, wares, or merchandizes, from the person or persons so threatened to be accused, shall be deemed offenders against the law and public peace, and the court before whom such offender or offenders

A. B. subscribed\* thereto, directed to Mr. J. W. threatening to accuse the said J. W. of having maliciously hired and procured a man wilfully to burn the dwelling house of him the said A. B. being a crime punishable by law with death, with the view and intent to extort and gain money from the said J. W. being the person so threatened to be accused, and which said letter is of the tenor following, that is to say, [\*847]

Salford, August 29, 1803.

“SIR,—The purport of this letter is to inform you, that last Saturday evening I was informed that you and J. M. hired a man to set the house on fire where I lived in Church Street, which was done by your and J. M.’s order; now, Sir, if you and J. M. do not come and give me ample satisfaction, your malicious actions shall be made known to the whole town. A. B.”

Against the form of the statute, &c. and against the peace, &c. [*Second count charged the defendant with sending a letter threatening to accuse the said J. W. of having hired a man to*

shall be tried, shall, in case he, she, or they, be convicted of any of the said offences, order such offender or offenders to be fined and imprisoned, or be put in the pillory or publicly whipped, or to be transported as soon as they conveniently may be, (according to the laws made for the transportation of felons) to some of his majesty’s colonies, &c. for the term of seven years as the court shall think fit to order. The statute does not repeal the clause in the Black Act respecting threatening letters, because that provision applies only where an actual demand is made; but this includes letters which, though the design is to extort money, do not, in words, demand it. 2 Leach, 767. It differs also from both that statute and 27 Geo. II. c. 15. in applying to letters not only anonymous or signed with fictitious names, but “*with or without a name*,” and, therefore, it may include menacing letters authenticated with the writer’s signature. While the former provisions specify that the writing must be a *letter*, the last uses the word *writing* in general, and as they apply to sending only, this applies also the party who knowingly delivers. The Black Act requires an actual demand; the 27 Geo. II.

applies to general accusations, where there is no design to procure money or goods, but a malicious intent to terrify; and the 30 Geo. II. takes a middle course, and reaches those cases only where there is no actual demand, but an intent “to extort or gain money, goods, wares, or merchandize.” Indeed, if the indictment be framed under this last act, and the latter appears to contain a demand which brings the case within 9 Geo. I. the prisoner must be acquitted, 2 Leach, 767. in notis. A letter sent to procure the re-delivery of a bill has been holden not within the words of the statute, 2 East, P. C. 1118. But by 52 Geo. III. c. 64. the provision is extended to an attempt to extort “any bond, bill of exchange, bank note, promissory note, or other security, for the payment of money, or any warrant of or order for the payment of money, or delivery or transfer of goods or other valuable thing.”—The indictment under this act must contain the same requisites as under 9 Geo. I. and 27 Geo. II. the letter must be set forth, and the intent correctly stated. The same rules respecting the venue and evidence will also apply.

*set fire to the said house of him the said A. B. being a crime punishable by law with pillory.]*

For sending a letter charging the prosecutor with sodomy to extort money, on 30 Geo. II. c. 24. (v)

[\*848]

That C. D. &c. &c. being a wicked and evil disposed person, and not minding to gain his livelihood by honest labour, but going about and contriving to defraud the subjects of our said lord the king, of their monies, to support his profligate way of life, after the twenty-ninth of September, 1757, to wit, on, &c. with force and arms, at, &c. knowingly and unlawfully did send a certain letter, with the name of E. I. subscribed thereto, and directed to one A. B. by the name, &c. of, &c. threatening to accuse the said A. B. of the crime of sodomy, which said letter was and is in the words and figures following, [*copy the letter*] with a view and intent to extort and gain money from the said A. B., to the great damage,\* &c. to the evil example, &c. against the peace, &c. and against the form of the statute, &c. [*Second count, omitting the direction of the letter, and stating the letter to have threatened to accuse the said A. B. of sodomitical practices, leaving out the recital in hæc verba. Note. There was another indictment against the person who delivered the letter, charging him with delivering, instead of sending it.*]

## INDICTMENTS, &c. FOR CHALLENGES.

Information in the crown office for sending a written challenge. (w)

[Commencement of information as ante 7.] That C. H. late of, &c. being an evil disposed person, and a disturber of

(v) From the MS. of a gentleman at the bar.

(w) This precedent was settled in A. D. 1809, by a very eminent crown lawyer now on the bench. An information will lie, 1 Burr. 402. and the original letters need not be produced, but attested copies will suffice, id. ibid. ante 1 vol. 858. We have seen that if death ensue in a deliberate duel, the party killing will be guilty of murder; ante 728. and 3 East, Rep. 581. and perhaps when an ineffectual exchange of shots takes place, both will be guilty under Lord Ellenborough's act, of malicious shooting, and the seconds as principals in the second degree; —though this has been nowhere decided. As it is settled that the attempt or incitement to commit felony is, in itself, a misdemeanour, the sending a challenge to fight, the giving language which tends to

the same end, or the acts of posting and opprobrious expressions, which have the same natural tendency, are indictable as misdemeanours at common law, 6 East, 464. 3 Inst. 157, 8. Com. Dig. Battel. B. For Lord Coke observes, "if any subject challenge another to fight, this is also an offence before any combat be performed, and punishable by law, for quando aliquid prohibetur et omne per quod devenitur et istud." 3 Inst. 158. And, therefore, he who carries a challenge, knowing what it is, is guilty also of misdemeanour, for which he may be indicted, 3 East, 581. 4 Bla. Com. Christ. Ed. 221. n. (1). A challenge is one of those offences for which a criminal information will be granted by the Court of King's Bench; though this will not be done where the party applying has himself first incited the proposal, 1 Burr. 316. ante 1 vol.



the peace of our\* said lord the now king, and intending to do great bodily harm and mischief to one G. K. late of the same place, esq. and *to provoke and excite* him the said G. K. unlawfully to fight a duel with and against him the said C. H. on, &c. with force and arms, at, &c. did unlawfully, wickedly and maliciously, write, send and deliver, and cause to be written, sent and delivered, to the said G. K. a certain paper writing in the form and manner of a letter from the said C. H. to the said G. K., and containing therein as follows, (that is to say,) Monday Morning, Oct. 1, 1798. Sir, the expression you (meaning the said G. K.) thought proper to make use of last night at Mr. S.'s, I (meaning himself the said C. H.) cannot interpret in any other light than as a direct insult. I (meaning himself the said C. H.) therefore expect, if you (meaning the said G. K.) have the courage and spirit of a gentleman, and which I (meaning himself the said C. H.) *very much doubt*, you (meaning the said G. K.) will fix the time and place for the necessary explanation, and I (meaning himself the said C. H.) am, sir, your humble servant, C. H. To prevent any unnecessary suspicions, I (meaning himself the said C. H.) send this note by my servant, but I (meaning himself the said C. H.) shall take care to be accom-

[\*849]

858. And on this occasion the original letters need not be produced, but copies of them will suffice, if sufficiently verified as correct, 1 Burr. 402. Not only is the sending a challenge indictable, but the writing a letter to provoke another to do so, is a misdemeanour, though the solicitation does not succeed, 6 East, 464. 2 Smith, 550. But mere words which, though they may produce a challenge, do not directly tend to that issue, as calling a man a liar or knave, are not necessarily criminal, 2 Ld. Raym. 1031. 6 East, 471. though it is probable they would be so if it could be shown that they were meant to provoke a challenge. And the same words, if *written*, would become indictable, because they would become libellous, 6 East, 171. The offences of fighting duels, and of sending or provoking challenges, are fully considered by Mr. Justice Grose, in passing sentence on Rice, convicted on a criminal information, for a misdemeanour of the latter kind, 3 East, 581. where the opinions of the earlier writers are collected. The *indictment* for this offence resembles, in some respects, the proceedings on threatening let-

ters. As in them it generally sets forth the letter, or expressions charged as criminal. And as in them, the venue may be laid either in the county where the challenge is written, or in that which it is received, 2 Campb. 506. ante 844. The act is, in itself, unlawful, and, therefore, the intent is merely matter of form, and need neither be expressly alleged nor proved by extrinsic evidence. At all events, the general description of evil intent in the commencement of the indictment will suffice after verdict; and then all that is necessary to constitute the offence must be taken to have been substantiated in evidence, 6 East, 464. The *punishment*, as in case of other misdemeanours at common law, is in the discretion of the court in which the defendant is convicted, 3 East, 584. In the case of Rice already alluded to, where there were circumstances of extenuation, he was only sentenced to pay a fine of 100*l.* to be imprisoned for a month, and to give security for his good behaviour for three years, himself in 1000*l.* and two sureties in 250*l.* each, 3 East, 584.

Second  
count.

[\*850]

Third  
count,

For send-  
ing a  
challenge  
by letter,  
to a ma-  
gistrate of  
the county  
of Herts.  
(x)

panied by a friend at the place appointed ; meaning and intending by the said paper writing, a challenge to the said G. K. to fight a duel with and against him the said C. H. to the great damage and terror of the said G. K. to the evil example, &c. and against the peace, &c. And the said coroner and attorney of, &c.\* that the said C. H. so being such person as aforesaid, and again intending, as aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. did in pursuance, of and for the completing of his said last mentioned intent and design, unlawfully, wickedly and maliciously, by a letter and writing, provoke, excite and challenge the said G. K. in the peace of God and our said lord the king then and there being, unlawfully to fight a duel with and against him the said C. H. To the great damage, &c. (as before.) And the said coroner and attorney, &c. that the said C. H. so being such person as aforesaid, and again intending as aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. did in pursuance of and for the completing his said last mentioned intent and design, unlawfully, wickedly and maliciously, by opprobrious words and threatening language, provoke, excite and challenge the said G. K. in the peace of God and our said lord the king then and there being, unlawfully to fight a duel with and against him the said C. H. to the great damage, &c. (as ante 849.) [Conclusion of information as ante 7.]

That J. M. E. late of, &c. being of a wicked and malicious mind, and of a turbulent and quarrelsome temper and disposition, and unlawfully, wickedly and unjustly, and of his malice aforethought, devising, contriving and intending to disturb, molest, disquiet, injure and abuse the said W. B. clerk, one of the justices assigned, &c. being a person of a quiet and peaceable temper and disposition, also to expose the said W. B. to shame, scandal and reproach, and to cause, instigate, move and provoke him the said W. B. to fight a duel with him the said I. M. E. and thereby to cause the said W. B. to break the peace of our said lord the king, he the said I. M. E. the sooner to complete his most unlawful, wicked and malicious purpose aforesaid, upon the 7th day of July, in, &c. with force and arms, at the parish of, &c. aforesaid, in the said county of H. did unlawfully, wickedly, diabolically and of his malice aforethought, frame, compose and write, and did cause and procure to be framed, composed and written, a certain writing on paper, in the form and by way of a let-

(x) This was the indictment against Elliot, at Herts. summer assizes, 1789. From Mr. Knapp's precedents, 20. and said to have been

drawn by Mr. Brown, and settled by Mr. Skelton. See a precedent nearly similar 6 Wentw. 385. where a count is added for a libel.

ter with the name I. M. E. thereunto set and subscribed, purporting to be a challenge from the said I. M. E. to the said W. B. with a design and intention to instigate, incite, move and provoke the said W. B. to fight a duel with him the said I. M. E. and thereby to cause him the said\* W. B. to break the peace of our said lord the king, and also with a design and intention to kill and murder him the said W. B., which said letter is directed to the said W. B. as follows, that is to say, The Rev. B. W. E., and is in the words and figures, to the tenor following, that is to say, Rev. Sir, (meaning Reverend Sir, and also meaning the said W. B.) the affair between you, (meaning the said W. B.) and me, (meaning himself the said I. M. E.) being not determined, please to meet me, (meaning himself the said I. M. E.) on Leigh Hill Common in the county of Bucks the 8th of this instant, (meaning the 8th day of July, in the 29th year aforesaid,) at 4 o'clock in the morning, (meaning at 4 of the clock in the morning) then, and there you (meaning the said W. B.) shall see the colour of my (meaning his the said I. M. E.'s) blood; I. M. E. Berkhamstead, July 7, 1789, which said letter or writing so framed, composed, written and subscribed as aforesaid, he the said I. M. E. afterwards, that is to say, on the said 7th &c. with force and arms, at, &c. unlawfully, wickedly and of his malice aforethought, did send, and cause and procure to be delivered to him the said W. B. with a design and intention to instigate, incite, move and provoke the said W. B. to fight a duel with him the said I. M. E. as aforesaid, and thereby to cause the said W. B. to break the peace of our said lord the king, and also with a *design and intention to kill* and murder him the said W. B. and other mischiefs upon him the said W. B. he the said I. M. E. did then and there, with force and arms, unlawfully, wickedly and maliciously bring, to the great scandal, infamy, dishonour and damage of him the said W. B. in contempt, &c. to the evil, &c. and against the peace, &c. And the jurors aforesaid, &c. that the said I. M. E. being such person as aforesaid, unlawfully, wickedly, unjustly and of his malice aforethought, devising, contriving and intending as aforesaid, afterwards, that is to say, upon the said 7th of July in the year, &c. aforesaid, with force and arms, at the parish of Berkhamstead St. Peter aforesaid, in the said county of H. did unlawfully, wickedly and of his malice aforethought, frame, compose and write, and did cause and procure to be framed, composed and written, a certain other writing on paper, in the form of and by way of a letter, purporting in itself to be a challenge from him the said I. M. E. to him the said W. B. with a design and intention to incite, instigate, move and provoke the said W. B. to fight a duel with him the said I. M. E., and thereby to cause him the said

[851\*]

Second  
count like  
the first  
only not  
setting out  
the letter.

[\*852] W. B. to break the peace of our said lord the king, which said writing in the form of and by way of a letter, so framed, composed and written as last aforesaid, he the said I. M. E. afterwards, that is to say, upon the said 7th of July, in the twenty-ninth year aforesaid, with force and\* arms, at the parish of G. G. in the said county of H. did unlawfully, wickedly and of his malice aforethought, send and cause and procure to be delivered to him the said W. B. with a design and intention to instigate, incite, move, and provoke him the said W. B. to fight a duel with him the said I. M. E., and thereby to cause the said W. B. to break the peace of our said lord the king, and other mischiefs, &c. [*the same conclusion as in the first Count.*]

Another precedent for sending a written challenge. (y)

That C. D. &c. &c. being a person of a turbulent and quarrelsome disposition, and not regarding the laws of this realm, and unlawfully, wickedly and unjustly contriving and intending to vex, injure, disquiet and terrify one A. B. &c. being a person of a quiet and peaceable disposition, and unlawfully to expose him the said A. B. to scandal, shame and reproach, and to cause, instigate and provoke him the said A. B. to fight a duel with him the said C. D. and thereby break the peace of our said lord the king, on, &c. with force and arms, at, &c. unlawfully, wickedly and maliciously, did compose and write, and cause and procure to be composed and written, a certain letter containing a challenge to fight a duel with him the said C. D. which said letter was and is in the words and figures following, &c. [*here copy letter.*] To the great damage, &c. to the evil, &c. and against the peace, &c. [*Second Count for the libel contained in the letter.*]

For sending a challenge in a letter. (z)

That J. N. late of, &c. being a person of a wicked and malicious disposition, and a common duelist, fighter and disturber of the peace of our said lord the king, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, on, &c. with force and arms, at, &c. aforesaid, wickedly and maliciously intending and designing as much as in him lay, not only to disquiet and terrify one T. E. but also the said T. E. maliciously, violently and wickedly to kill and murder, and he the said J. N. his said malicious and wicked intentions and designs the sooner to complete, perfect and put in practice, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, did unlawfully and wickedly provoke and excite the said T. E. to fight a duel against him the said J. N. with a sword, and that he the said J. N. a certain challenge in the name of the said J. N., in the form of a letter to the said T. E. directed, did then and

(y) From the MS. of a gentleman at the bar.

(z) See a similar precedent, Cro. C. C. 102.

there maliciously, wickedly and diabolically write and cause to be written, and which said letter was to the tenor and effect following, that is to say, [*here set forth the letter with proper innuendoes to explain it,*] which said challenge, so as aforesaid written and directed, he the said J. N. afterwards, to\* wit, on the said, &c. at, &c. aforesaid, maliciously and wickedly, to the said T. E. did send, and deliver, and cause to be sent and delivered, to the great damage and terror of him the said T. E., to the evil example, &c. and against the peace, &c.

[\*853]

That J. H. late of, &c. being of a turbulent, wicked and malicious disposition, and designing and intending to do great bodily harm and mischief to one J. B. heretofore, to wit, on, &c. with force and arms, at, &c. did unlawfully, wickedly and maliciously send and cause to be sent, a certain written challenge to the said J. B., and did thereby provoke, excite and challenge the said J. B. unlawfully to fight a duel with and against him the said J. H., which said written challenge is as follows: that is to say, [*here set out the challenge.*] And the jurors, &c. do further present, that the said J. B. having then and there refused to fight with and against him the said J. H. in pursuance of such unlawful, wicked and malicious challenge as aforesaid, he the said J. H. for the completing his said evil disposed purpose and design, and further to provoke and incite the said J. B. to fight a duel, with and against him the said J. H. afterwards, to wit, on the same, &c. with force and arms, at, &c. aforesaid, unlawfully, wickedly and maliciously, did stick up, place and expose to public view, and cause and procure to be stuck up, placed and exposed to public view, to wit, upon and against a certain sign post, of and belonging to a certain dwelling house and public inn, there called and known by the name and sign of the king's head, a certain paper writing, with the name of him the said J. H. thereunto subscribed, containing certain scurrilous and abusive matter concerning him the said J. B. which said paper writing is as follows: that is to say, "In consequence of an anonymous letter received by me, (meaning himself the said J. H.) which I, (again meaning himself the said J. H.) have reason to believe was written by J. B. (meaning the said J. B.) I (meaning himself the said J. H.) have sent him (meaning the said J. B.) a challenge, hoping for satisfaction suitable to a gentleman, which he (meaning the said J. B.) has refused, therefore I (meaning himself the said J. H.) now post him (meaning the said J. B.) as a coward. J. H.—M. Dec. 13th, 1782." to the great damage, scandal and disgrace of the said J. B. and against the peace, &c. And the jurors aforesaid, upon their

For sending a written challenge to the prosecutor, and posting him as a coward, by sticking up a written paper in a public place. (a) First count for sending a written challenge to the prosecutor and posting him.

Second count, for a common challenge.

(a) See other precedents, Cro. C. A. 34. Cro. C. C. 102. Starkie, 630. *Crim. Law.*

[\*854] oath aforesaid, do further present, that the said J. H. unlawfully, wickedly and maliciously, designing and intending great bodily harm to the said J. B. afterwards, to wit, on the same, &c. aforesaid, at, &c. aforesaid, in pursuance of and for the completing his said last mentioned malicious and wicked intent and design,\* with force and arms, did unlawfully, wickedly and maliciously, provoke, excite and challenge the said J. B. unlawfully to fight a duel, with and against him the said J. H. to the great damage and terror of him the said J. B. and against the peace, &c.

An information for a similar offence.

That A. B. late of, &c. esq. being a person of turbulent, wicked and malicious disposition, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and wickedly and maliciously intending, as much as in him lay, not only to terrify and affright one C. a good and peaceable subject of our said lord the king, but also to kill and murder him, heretofore, to wit, on, &c. with force and arms, at, &c. unlawfully and wickedly did provoke and challenge the said C. to fight a duel against him the said A. B. with sword and pistol; and the said — of our said lord the king, giveth the court here further to understand and be informed, that the said C. having then and there refused to fight with the said A. B. in pursuance of such wicked and unlawful challenge last aforesaid, he the said A. B. for the completing his aforesaid evil and wicked purpose and design, and further to provoke and incite the said C. to fight and duel, against him the said A. B. in the manner aforesaid, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, did wickedly and maliciously place, stick up and upon, and caused to be placed, stuck up and exposed to public view, to wit, on the market house at C. aforesaid, a certain paper writing, with the name of him the said A. B. thereunto subscribed, containing certain scurrilous and abusive matter against the said C. of the tenor following: that is to say, "Having received (meaning &c.) a most ungentleman-like affront from C. H. esq. (meaning the said C.) I (meaning himself the said A. B.) distinguish him (meaning the said C.) thus, that none may doubt the individual man of — in the county of M., he (again meaning the said C.) having in the most cowardly manner refused to give me (meaning himself the said A. B.) the satisfaction due to a gentleman, I (meaning himself the said A. B.) here in the sight and for the information of his countrymen, post him (meaning the said C.) and declare him (meaning &c.) to be a dirty, cowardly, insolent fool, as such I (meaning himself the said A. B.) will ever treat him, (meaning the said C.) A. B. of B. in the county of M." to the great damage and terror of the said C. H., and against the peace of our said lord the king, his crown and dignity.



That W. J. late of, &c. intending to procure great bodily harm and mischief to be done to J. B. late of the same place, gentleman, and to incite and provoke the said J. B. unlawfully to fight a duel with and against one J. H. late of the same place, esquire, on, &c. with\* force and arms, at, &c. did unlawfully and wickedly deliver and cause to be delivered, a certain written challenge of and from the said J. H. to the said J. B. unlawfully to fight a duel with and against the said J. H. which said written challenge is as follows, that is to say, [*here set out the written challenge,*] to the great damage, &c. and against the peace, &c. And the jurors, &c. that the said W. J. intending as aforesaid, afterwards, to wit, on the same, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully and wickedly did deliver and cause to be delivered a certain written challenge as from and on the part and by the desire of the said J. H. to the said J. B. unlawfully to fight a duel with and against the said J. H. which said written challenge is as follows, that is to say, [*here set out the written challenge,*] against the peace, &c. And the jurors, &c. that the said W. J. intending as aforesaid, afterwards, to wit, on the same, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully and wickedly provoke and incite the said J. B. unlawfully to fight a duel with and against the said J. H. to the great damage, &c. and against the peace, &c.

That T. K. late of, &c. on, &c. was one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county of F. and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, and that the said T. K. being such justice as aforesaid, being of a turbulent, wicked and malicious disposition, and disregarding the duty of his said office and station, and intending to procure great bodily harm and mischief to be done to J. R. late of, &c. aforesaid, esquire, (then and there also being one of the justices of our said lord the king, assigned to keep the peace of our said lord the king in and for the said county of F. and also to hear and determine divers felonies, trespasses and other misdemeanours in the said county committed) and also intending as much as in him the said T. K. lay, to incite and provoke the said J. R. unlawfully to fight a duel with and against one W. L. late of the same place, esquire, on the said, &c. with force and arms, at, &c. aforesaid, did unlawfully, wickedly and maliciously write and cause to be written, a certain paper writing in the words, letters and figures fol-

Against the person who carried the challenge mentioned in the foregoing precedent to the prosecutor.

(b)

[\*855]

First count for delivering a written challenge of and from J. H. to the prosecutor.

Second count for delivering a written challenge, as from and on the part and by the desire of J. H. to the prosecutor.

Third count for provoking and inciting the prosecutor to fight, &c. Against a justice of the peace for writing and delivering a challenge to another justice of the peace at the instance of a third person.

(c)

First count for writing

(b) See similar precedents, Cro. C. C. 103. and notes ante 843. n. w.

(c) See similar precedents, Cro. C. C. 104. Starkie, 629.

and delivering a challenge.

[\*856]

Second count for delivering a written challenge as from a third person.

Third count for provoking and inciting the prosecutor to fight, &c.

Information in the crown office for verbally and personally challenging the prosecutor, a justice of the peace, to fight a duel. (d)

lowing, to wit, "To J. R. esquire, at B. (meaning the said J. R.) By the desire of Mr. W. L. (meaning the said W. L.) I (meaning himself the said T. K.) wait on you (meaning the said J. R.) to inform you (meaning the said J. R.) that he (meaning the said W. L.) expects such satisfaction as one gentleman should require from another for an insult bestowed\* on him; your (meaning the said J. R.'s) conduct merits every treatment a scoundrel deserves. Manner, time and place left to you (meaning the said J. R.) T. K. Dec. 2, 1776," (meaning and intending by the said paper writing a challenge to the said J. R. to fight a duel with and against the said W. L.) which said paper writing (meaning and intending the same as such challenge as aforesaid) he the said T. K. afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, unlawfully, wickedly and maliciously, did deliver and cause to be delivered to the said J. R. to the great damage, &c. and against the peace, &c. And the jurors, &c. that the said T. K. being such evil disposed person and disturber of the peace of our said lord the king as aforesaid, and intending to procure great bodily harm and mischief to be done to the said J. R. and to incite and provoke him the said J. R. unlawfully to fight a duel with and against the said W. L. afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully, wickedly and maliciously deliver and cause to be delivered, a certain written challenge as from, and on the part, and by the desire of the said J. R. to the said W. L. unlawfully to fight a duel with and against the said W. L. which said last mentioned challenge is as follows, that is to say, [*here set out the challenge,*] against the peace, &c. And the jurors, &c. do further present, that the said T. K. intending as aforesaid, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully, wickedly and maliciously provoke and incite the said J. R. unlawfully to fight a duel with and against the said W. L. to the great damage, &c. and against the peace, &c.

[Commencement of information as ante 7.] That J. S. late of, &c. being a person of a wicked and malicious mind, and of an unruly and turbulent disposition, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and wickedly and wilfully and maliciously devising, designing and intending, not only to scandalize and vilify S. H. of, &c. esquire, then being mayor of the borough of, &c. and also one of the justices of our said lord the king, assigned, &c. and to bring him the said S. H.

(d) From 6 Wentw. 491. See lence. Hand. Prac. 183. other precedent of verbal chal-

into contempt and ridicule with all the liege subjects of our said present sovereign lord the king, knowing him the said S. H. but also to move, incite, instigate and provoke him the said S. H. to fight a duel with him the said J. S. and thereby to kill and murder him the said S. H. and to cause him the said S. H. to break the peace of our said sovereign lord the\* king, upon, &c. with force and arms, at, &c. did in the presence of the said S. H. unlawfully, wickedly, openly and maliciously, speak and utter to the said S. H. these scandalous, wicked, defamatory and provoking words following, that is to say, "Thou art a scoundrel," &c. &c. and the said J. S. did then and there also wilfully, wickedly, maliciously and openly, and in the presence and hearing of him the said S. H. and without any just cause or provocation whatsoever, but of his malice aforethought, did then and there challenge, and as much as in him the said J. S. lay, endeavour to incite, instigate, move and provoke him the said S. H. to fight a duel with him the said J. S. with swords and pistols, and that he the said J. S. then and there several times threatened, that if he said S. H. would not fight him the said J. S. he the said J. S. would post him the said S. H. for a coward; and the said J. S. of his malice aforethought, did then and there at several times urge and try as much as in him the said J. S. lay, to provoke the said S. H. to combat him the said J. S. by reason whereof he the said S. H. was then and there put under the utmost fear and apprehension of losing his life, and other mischiefs upon him the said S. H. he the said J. S. then and there with force and arms did bring, to the great damage, scandal, infamy and disgrace of him the said S. H. in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. [*Second count for the opprobrious words in the execution of the office of mayor. Third count for challenging, without mentioning the words and posting. Fourth count for the challenging only. Common conclusion of information as ante .*]

[\*857]

That P. B. late of, &c. being a person of an evil mind, and of a turbulent and quarrelsome temper and disposition, and not having any regard for the laws of this realm, most unlawfully, wickedly and unjustly, and out of malice aforethought, devising, contriving and intending not only to vex, injure, hurt, disquiet and terrify G. S. late of, &c. being a person of good name, fame, character, credit and reputation, and of a quiet and peaceable temper and disposition, but also to expose the said G. S. to scandal, shame and reproach, and to cause, instigate, incite and provoke the said G. S. to fight a duel with him the said P. B., and thereby to cause the said

For a personal challenge to fight a duel. (e)

[\*858] G. S. to break the peace of our said lord the king, he the said P. B. in order to complete, perfect and bring to effect his most unlawful and wicked purposes aforesaid, upon, &c. with force and arms, at, &c. aforesaid, did unlawfully, wickedly, wilfully, maliciously and openly, and in the presence and hearing of him the said G. S.,\* and without any just cause or provocation whatsoever, but of his malice aforethought, and in a threatening, challenging and provocative manner, tell him the said G. S. that he (meaning the said P. B.) had been told by Mr. M. (meaning one J. M. of, &c. in the county of Middlesex) that he (meaning the said G. S.) had taken great liberties with the character of him the said P. B., *and upon the said G. S. then and there assuring the said P. B. that such information was not true, he the said P. B. did then and there in a threatening, challenging and provocative manner as aforesaid, further tell him the said G. S. that he (meaning the said G. S.) must come before the said Mr. M. (again meaning the said J. M.) to contradict it, but on the said G. S. then and there refusing so to do, the said P. B. did then and there in a threatening, challenging and provocative manner, as aforesaid, further tell him the said G. S. that he (meaning himself the said P. B.) would expect personal satisfaction from him (meaning the said G. S.) as soon as the other two affairs of a serious nature which he (meaning the said G. S.) had then on his hands, were settled, (meaning and alluding to two different challenges to fight duels, which had been thencefore unlawfully and maliciously sent to the said G. S. by one W. S. and the said J. M.) with a design and intention to instigate, incite, move and provoke the said G. S. to fight a duel with him the said P. B. as aforesaid, and thereby to cause the said G. S. to break the peace of our said lord the king as aforesaid, and other mischiefs upon him the said G. S. he the said P. B. did then and there, with force and arms, unlawfully and maliciously bring, to the great damage, scandal and disgrace of him the said G. S. in contempt, &c. to the evil and pernicious example, &c. and also against the peace, &c. And the jurors, &c. do further present, that the said P. B. being a person of, &c. and not having any regard for the laws of this realm, most unlawfully, wickedly and unjustly, and out of his malice aforethought, devising, contriving and intending, as much as in him the said P. B. lay, further to disturb, disquiet and molest the said G. S. being such person of good name, &c. and a man of a quiet and peaceable temper and disposition as aforesaid, and also further to expose the said G. S. to scandal, shame and reproach, and to cause, instigate, move, provoke and incite the said G. S. to fight a duel with him the said P. B. and thereby to cause him the said G. S. to break the peace of*

Second  
count.

our said lord the king as aforesaid, he the said P. B. in order to complete, perfect and bring to effect his said most unlawful and wicked purposes, afterwards, that is to say, upon the said, &c. at, &c. aforesaid, did again wickedly, unlawfully, openly and maliciously, by and in the presence and hearing of him the said G. S. and without any just cause or provocation whatsoever,\* but of his malice aforethought, in a threatening, challenging and provocative manner speaking to him the said G. S. with these threatening and provocative words following, that is to say, I, (meaning himself the said P. B.) have been told, &c. &c. [*same as in first count,*] with a design and intention to instigate, incite, move and provoke the said G. S. to fight a duel with him the said P. B. as aforesaid, and thereby to cause the said G. S. to break the peace of our said lord the king as aforesaid, and other mischiefs upon him the said G. S. he the said P. B. did then and there with force and arms unlawfully and maliciously bring, to the great damage, scandal and disgrace of him the said G. S. in contempt, &c. [*Third and fourth counts like the first and second, omitting the parts in Italic.*] And the jurors, &c. that the said P. B. on, &c. at, &c. aforesaid, did again wickedly, unlawfully, openly and maliciously, and in the presence and hearing of him the said G. S. and without any just cause or provocation whatsoever, challenge and as much as in him the said P. B. lay, endeavour to move, incite, instigate and provoke him the said G. S. to fight a duel with him the said P. B. and thereby to cause him the said G. S. to break the peace of our said lord the king as aforesaid, and other mischiefs upon him the said G. S. did then and there bring, to the great damage, &c. of him the said G. S. in contempt, &c. &c.

[\*859]

Fifth count.

That L. C. late of, &c. being a person of a wicked and malicious mind, and of an unruly and turbulent disposition, and not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, and wickedly, unlawfully and maliciously devising and intending to move, incite, instigate and provoke one H. D. to fight a duel with him the said L. C. and thereby to kill and murder him the said H. D. and to cause him the said H. D. to break the peace of our said lord the king, upon, &c. by force and arms, at, &c. aforesaid, did wickedly, unlawfully, openly and maliciously challenge, and (as much as in him the said L. C. lay) endeavour to move, incite, instigate and provoke him the said H. D. to fight a duel with him the said L. C. (he the said L.

Information for a verbal challenge to fight a duel, and a violent assault, beating, throwing on the ground, leaving senseless, &c. (f)

C.) then and there unlawfully, wickedly, maliciously and openly, and in the presence and hearing of him the said H. D. and without any just cause or provocation whatsoever, but out of his malice aforethought, speaking and uttering these hostile, threatening, challenging and provocative words following, that is to say, You (meaning the said H. D.) wear a sword, do you? damn you, (again meaning the said H. D.) I (meaning himself the said L. C.) have a mind to beat\* out your brains with this stick (meaning a certain stick which the said L. C. had then and there in his hands) and drag you (again meaning the said H. D.) through the kennel. By means whereof he the said H. D. was then and there put under the utmost fear and apprehension of losing his life; and other mischiefs upon him the said H. D. he the said L. C. did then and there by force and arms bring, to the great damage, &c. in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. [*Second count like the first, only charging the words, You wear a sword, do you? Third count charging the remainder of the words. Fourth, omitting the words altogether.*] And the said coroner and attorney, &c. that the said L. G. in order the sooner to bring about and accomplish his said most unlawful and wicked purposes as aforesaid, afterwards, that is to say, on, &c. by force and arms, at, &c. aforesaid, in and upon the said H. D. being then and there in the peace of God and of our said lord the now king, did unlawfully and violently make an assault and affray, and him the said H. D. he the said L. C. did then and there by force and arms, unlawfully and violently take in his arms, and with all his force and might throw and dash down upon and against the ground, he the said L. C. then and there unlawfully, wickedly, maliciously and openly, and in the presence and hearing of the said H. D. and without any just cause or provocation whatsoever, but out of his malice aforethought, speaking and uttering these hostile, threatening, challenging and provocative words following, that is to say, I (meaning himself the said L. C.) will teach you (meaning the said H. D.) to wear a sword: which words he the said L. C. then and there spoke and uttered as aforesaid, with a further intention to move, incite, instigate and provoke him the said H. D. to fight a duel with him the said L. C. in order to kill and murder him the said H. D. and to cause him the said H. D. to break the peace of our now said lord the king. And the said coroner, &c. that the said H. D. had no sooner recovered himself from the ground on which he the said L. C. had so thrown and dashed him the said H. D. as aforesaid, and got upon his legs, but the said L. C. did immediately then and there by force and arms, unlawfully and violently hit and strike him the said H. D. over the

[\*860]

Fifth  
count.



head of him the said H. D. several grievous and violent strokes and blows with a naked sword which he the said L. C. had then and there held in his hands, whereby the said H. D. was then and there knocked down to the ground as aforesaid, and him the said H. D. being so knocked down to the ground as aforesaid, he the said L. C. did then and there by force and arms, unlawfully and violently beat and strike with his fist, and about his the said H. D.'s head, breast, back, arms, shoulders and several\* other parts of his body, by reason whereof he the said H. D. then and there remained and continued upon the ground for a long time, to wit, for the space of half an hour then next following and upwards, quite stupified and senseless, and as one that was almost dead, also by means thereof he the said H. D. was then and there very much hurt and bruised, in and about his head, breast, back, arms, shoulders and several other parts of his body, and put under the utmost fear and apprehension of losing his life, and also by reason thereof he the said H. D. then and there remained and continued for a long time, to wit, for the space of six hours then next following and upwards, quite speechless, and also during that time and for the space of ten days next following and upwards, he the said H. D. remained and continued very ill and weak, and in a very dangerous and languishing condition occasioned by the means aforesaid, that is to say, at, &c. aforesaid, and other mischiefs upon him the said H. D. he the said L. C. did then and there by force and arms unlawfully and violently bring, to the great damage, &c. [*as ante 860. There were other counts charging only parts of the violence, and a count for a common assault.*]

That A. B. late of, &c. unlawfully and maliciously intending to do great bodily harm and mischief to R. G. T. and to break the peace, &c. on, &c. with force and arms, at, &c. wickedly and maliciously did endeavour to stir up, provoke and excite the said R. G. T. to challenge the said A. B. to fight a duel with him the said R. G. T. by then and there writing, sending and delivering to him R. G. T. a scandalous, malicious and provoking letter from the said A. B. to the said R. G. T. to the tenor and effect following, viz. No. 28 Orchard-street, 1st. June, 1803, Sir, (meaning the said R. G. T.) (*h*) it will, I, (meaning the said A. B.) conclude, from the description you gave of your feelings and ideas with respect to insult, in a letter to Mr. Jones of last Monday's date, be sufficient for me to tell you that in the whole of the Carmarthenshire elec-

For writing a letter inciting another to send a challenge to fight a duel. (*g*)

(*g*) This was the indictment against Phillips, and held as sufficient, 6 East 464. see notes ante.

*Crim. Law.*

(*h*) See the doctrine of innuendo explained post 873, 4. as to libels.

[\*862]

For as-  
saulting a  
person  
and pro-  
voking to  
fight by  
opprobri-  
ous lan-  
guage. (i)

For send-  
ing a chal-  
lenge a-  
bout mo-  
ney lost at  
a game  
called pass  
dice. On  
9 Ann. c.  
14. s. 8.  
(j)

tion business, as far as it relates to me, you have behaved like a blackguard; I shall expect to hear from you on this subject, and will punctually attend to any appointment you may think proper to make (meaning that the said A. B. would punctually attend to any appointment that the said R. G. T. might think proper to make for the purpose of his fighting a duel with and against the said R. G. T.) signed by the said R. G. T. with intent to stir up, provoke\* and excite the said R. G. T. to challenge the said A. B. to fight a duel with him, &c. against the peace, &c.

That R. B. late of, &c. being a disturber of the peace of our said lord the king, on, &c. with force and arms, at, &c. aforesaid, in and upon one W. C. in the peace of God and our said lord the king then and there being, did make an assault, and with threats and opprobrious language, then and there wickedly and maliciously did stir up, provoke, and excite him the said W. C. to fight a battle against him the said R. B. and further, that the said R. B. afterwards, to wit, on the same day and year abovementioned, at, &c. aforesaid, came with force and arms, and with threats and opprobrious language then and there wickedly and maliciously did stir up, provoke and excite him the said W. C. then and there being in the peace of God and of our said lord the king, to fight against him the said R. B. a duel with swords and pistols, and other wrongs to the said W. C. then and there did, to the great damage and terror of him the said W. C. in contempt, &c. to the evil example, &c. and against the peace, &c.

That G. S. late of, &c. esquire, being a person of quarrelsome and turbulent temper and disposition, and a disturber of the peace of our said lord the king, on, &c. with force and arms, at, &c. in, &c. unlawfully and maliciously did challenge J. M. esquire, a peaceable subject of our said lord the king, to fight with him the said J. M. on account of money then and there won by the said J. M. of the said G. S. by then and there gaming and playing at dice with the said G. S. at a certain game called pass dice, or hazard, (k) to the great damage of the said J. M. in contempt, &c. and against the peace, &c. and also against the form of the statute, &c. And the jurors, &c. do further present, that the said G. S. being such person as aforesaid, afterwards, that is to say, on, &c. with force and arms, at, &c. unlawfully and maliciously did provoke the said J. M. to fight him the said G. S. on account

(i) See a similar precedent, Cro. C. C. 102.

(j) See similar precedents, 4 Wentw. 317. 2 Starkie, 407. see the act recited and notes ante 833. on

assaults on account of money won at gaming.

(k) As to stating the name of the game, see ante 833.

of money then and there won by the said J. M. of the said G. S. by then and there playing at dice with the said G. S. at a certain game called pass dice, to the great damage of, &c. in contempt, &c. and against the peace, &c. and also against the form, &c. [*Counts for an assault on account of money won at play, were added as ante 833.*]

## INDICTMENTS FOR MALA PRAXIS.

That\* A. the wife of T. A. late of, &c. gentleman, being a person of wicked mind and disposition, and unlawfully, wickedly and injuriously minding and intending to impose upon and deceive divers liege subjects of our said lord the king, under the false colour and pretence that she the said A. A. was well skilled in the art, profession or calling of a midwife, and that she was of sufficient knowledge and ability to undertake and practice the said art, profession or calling, and to execute and perform the duties of such art, and also unlawfully, &c. going about and causing and procuring herself the said A. A. to be engaged, retained and employed by divers liege subjects of our said lord the king, in the delivery of pregnant women, for large sums of money to be paid to her the said A. A. for such her pretended skill in the said art, &c. of a midwife, on, &c. with force and arms, at, &c. unlawfully did set up and practice the said art of a midwife. And the jurors, &c. do further present, that the said A. A. so having set up, used and practised the said art, &c. on, &c. at, &c. in pursuance of her aforesaid wicked intentions, did cause and procure herself the said A. A. to be retained and employed in the said art, &c. to deliver one M. D. then the wife of J. D. of the parish and county aforesaid, butcher, of a certain male child with which she the said M. D. was then and there pregnant, for a certain large sum of money to be thereupon paid to her the said A. A. for her attendance on the said M. D. and for her skill and ability in the said art, &c. of a midwife, and the said A. A. then and there unlawfully, &c. did undertake to deliver the said M. D. of the said male child with which she was then pregnant as aforesaid, and did then and there unlawfully, &c. falsely pretending that she the said A. A. was of sufficient skill and ability and of sufficient knowledge in the said art, &c. of a midwife to execute and perform the same. And the jurors, &c. do further present, that the said A. A. not regarding the life of the said M. D. or of the

[\*863]  
Against a  
midwife  
for engag-  
ing the de-  
livery of a  
woman,  
and so un-  
skilfully  
using the  
art that  
she died.  
(1)

(1) From 4 Wentw. 360. see other precedents, Vet. Int. 231. Trem. P. C. 242.

[#864] child with which she was so pregnant as aforesaid, and being wholly unskilled in the said art, &c. of a midwife, and of no ability to perform and execute the duties thereof, and neglecting and refusing necessary advice and assistance,\* on, &c. aforesaid, at, &c. aforesaid, in, for and about the delivery of the said M. D. of the said child with which she was so pregnant as aforesaid, with force and arms unlawfully, wickedly, ignorantly, rashly, injuriously, unskilfully, improperly, unnecessarily and contrary to good practice in the said art, &c. of a midwife, did then and there cut off, tear off, pull off, separate, sever and dismember, the left arm of the said child with which she the said M. D. was so pregnant as aforesaid, and of which child the said M. D. was then and there about to be delivered, and did also then and there unskilfully, &c. and contrary, &c. make use of and apply in and about the said delivery of the said M. D. certain destructive instruments, to wit, a certain instrument called perforating scissors, and also a certain other instrument called a crotchet, and the said several instruments called perforating scissors and a crotchet, did then and there unskilfully, &c. and contrary, &c. introduce, make use of and apply in and to the womb and body of the said M. D. and with the said destructive instruments called perforating scissors and a crotchet, did then and there unlawfully, &c. and contrary, &c. break in pieces, crush and destroy the ribs and other parts of the body of the said male child, with which she the said M. D. was so pregnant, and of which she was so then and thereabout to be delivered as aforesaid, within the womb and body of the said M. D.; by reason and means of which said unlawful, wicked, injurious, &c. cutting off the arm of the said child as aforesaid, and also of the said unlawful, &c. use and abuse of the said several instruments called, &c. as also by reason and means of the breaking in pieces, crushing and destroying the ribs and other parts of the body of the said child as aforesaid, within the womb and body of the said M. D. as aforesaid, the womb, *vagina abdomen*, and other parts of generation, and of the body of the said M. D. were by the broken bones of the said child, and by the said instruments, called, &c. then and there greatly torn, lacerated, extended, wounded, injured and hurt, and a great and violent effusion and discharge of blood from the womb and body of the said M. D. was thereby then and there occasioned, of which said tearing, laceration, extension, wounding, injuring and hurting of the womb, *vagina abdomen*, and other parts of generation, and other parts of the body of the said M. D. as aforesaid, and of the great and violent effusion, &c. of blood from the womb and body of the said M. D. occasioned thereby as aforesaid, she the said M. D. from, &c. until, &c. at, &c. did languish,

and languishing did live, on which said day of, &c. she the said M. D. at, &c. of the said laceration, &c. of the womb, &c. and of the body of the said M. D. in manner and form aforesaid, and of the\* great and violent effusion, &c. of blood, from the womb and body of the said M. D. died; to the great scandal, infamy and disgrace of human nature, and of the midwives of this kingdom, to the very great damage of the said J. D. in evil example, &c. and against the peace, &c. [\*865]

### OFFENCE OF LIBEL. (m.)

PRELIMINARY\* NOTES UPON THE OFFENCE, MODES OF PROSECUTION, VENUE, INDICTMENT, EVIDENCE, VERDICT, JUDGMENT AND PUNISHMENT. [\*866]

*Offence.* In briefly considering the offence of *Libel*, we will enquire, 1st. by what mode of expression a libel may be conveyed; 2dly, of what kind of defamation it must consist; 3dly, how plainly it must be expressed; 4thly, what mode of publication is essential; 5thly, who are liable to be punished for a libel criminally, either as composer or publisher. *Offence.*

I. *By what mode of expression a libel may be conveyed.* The most simple idea of libel is where the defamatory matter is reduced into writing. But the exhibition of a picture, intimating that which in print would have been libellous, is equally criminal, 2 Campb. 512. 5 Co. 125. but see 3 Campb. 323. So the fixing a gallows at a man's door, the burning him in effigy, or the exhibiting him in any ignominious manner, is indictable as a libel, Hawk. b. 1. c. 73. s. 2. 11 East 227. But mere opprobrious words, unless they are spoken of a magistrate in his official capacity, or tend immediately to provoke a challenge, are not punishable or criminal in the temporal courts, 3 Salk. 190. 2 Camp. 142.

II. *What kind of defamation a libel must contain.* There is, perhaps, no branch of the law which it is so difficult to reduce to any exact principles, or to compress within a small compass as the requisites of libel. All publications denying the Christian religion to be true—all works casting gross ridicule on the church of England—all writings subversive of morality, and tending to inflame the passions by indecent language—are indictable at common law; and publications, the natural tendency of which is to excite sedition, to bring

(m) As to this offence in general. see Hawk. b. 1. c. 73. Com. Dig. Libel. Bac. Abr. Libel. Holt on Libels.

George on Libel. Starkie on Slander. Burn J. Libel. Williams J. Libel. Dick. J. Libel.

[\*867] either the constitution of this country or government in general into contempt, are highly criminal. But it has been laid down that the imputation of mere error in judgment, even to the sovereign himself, if done "with perfect decency and respect" and without any imputation of bad motives," is not libellous, 2 Campb. 402. The question then with respect to publications on the king and his ministers, is whether bad motives are imputed to them by the writer, and whether they are couched in terms that are decent and respectful. From hence it will follow, that though the tendencies of measures may be discussed with temperance, they must never be imputed to corrupt design, that no member of the government must be charged with corruption, or with a wish to infringe on the liberties of the people: this indeed, follows from the definition of libel itself, as applied to individuals. It is said to be "a malicious defamation tending to blacken the memory of one who is dead, or the reputation of one who is alive, and expose him to public hatred, contempt, or ridicule," Hawk. b. 1. c. 73. s. 1. And nothing can be clearer than that *truth* is no justification of defamatory writings, as far as respects criminal prosecutions, for this reason, that the criminal law subjects libellers to punishment, not as a mode of redress to the party libelled, but on account of such libel having a tendency to occasion a breach of the peace, Bul. N. P. 9. Selwyn, N. P. Libel, 2nd ed. 1047, note 6.: and it has been argued, that as truth is more likely to provoke animosity than falsehood, it is in fact more libellous, 5 Co. 125. Hawk. b. 1. c. 73. s. 6. And, as the officers of state have at least the same privileges with other persons, it follows that to write truth though ever so notorious, respecting them, which tends to "blacken their reputation, and expose them to public hatred, contempt, or ridicule," is, in itself, a libel. It is true the term "*malicious*" is introduced into the definition by Hawkins; but in this case as in murder and many others, the quality is rather a legal inference from the crime than one of its constituent parts, Gilbert's cases, L. and E. 190. 1, 2, &c.: indeed there is never any occasion to prove it; and, in the cases of printers and publishers, we find men repeatedly convicted where it is probable they were ignorant of the contents of the papers they were assisting to circulate, 5 Burr. 2686. 20. St. Tr. 803. Cobbet's ed. Whether or not the party acted maliciously makes, therefore no difference in practice. The doctrine of libels is founded solely on a regard to public tranquility: it puts the merits and the feelings of individuals out of the question; and this consideration may, in some degree elucidate a subject which, in itself, appears so perplexing.

It is further to be collected that, in order to constitute a libel it is not necessary that any thing *criminal* should be im-



puted to the party injured ; it is sufficient if the writer has exhibited him in a ludicrous point of view, has pointed him out as an object of ridicule\* or disgust, has in short, done that which has a natural tendency to excite him to revenge, 2 Wils. 403. Bac. Abr. Libel A 2. 4 Taunt. 355. 3 Campb 214. And therefore, words in themselves not scandalous, become criminal if put in writing so that *they tend in any degree to a man's discredit*, Hardw. 470. Bac. Abr. Libel A. 2. It is also said that this applies still more strongly to persons employed in public capacities, id. ibid. So that to publish any thing which "tends in any degree to the discredit" of the ministry or of public functionaries, whether true or false, is libellous. And this seems to be the true boundary of the freedom of discussion.

[\*868]

A greater latitude of observation has, however, been allowed on *books*, than on *characters*. When a work is sent into the world, the author subjects it to fair and impartial criticism. "That publication," said Lord Ellenborough, "I shall never consider as a libel, which has for its object not to injure the reputation of any individual, but to correct misrepresentations of fact, to refute sophistical reasonings, to expose a vicious taste in literature, or to censure what is hostile to morality," 1 Campb. 352.: for this purpose the critic may employ ridicule however poignant, 1 Campb. 357. and it is even allowed to attack the author himself, so far as he has mixed himself up with the composition he has thought fit to publish, but the moment the critic travels from the book to follow the writer into his private life, and leaves his works to attack his character, the criticism becomes libellous, 1 Campb. 355.

It is laid down generally by the older writers, that it is equally libellous to throw a shade over the memory of the dead as to detract from the reputation of the living, 5 Co. 125. Hawk. b. 1. c. 73. s. 1.; but on the principle which constitutes the criminality of libels, this can only be true when the writing has a tendency to create a breach of the peace, by inciting the friends and relatives of the deceased to avenge the insult offered to the family : and it is therefore now holden to be necessary to aver in the proceedings and prove on the trial, that the publication was intended to create disturbance, to throw scandal on the family or descendants of the party accused, or to induce some one to break the peace for the purpose of vindicating the deceased, 4 T. R. 126.

III. *How plainly the scandal must be expressed.* It seems to be deducible from the cases on this subject, that if the matter be understood as scandalous, and is calculated to excite ridicule or abhorrence against the party intended, it is libellous, however it may be expressed, 5 East 463. 1 Price, 11.

17. 18. Irony may convey imputations more effectually than direct assertion; thus it has been holden, that where a man reckons up the acts of charity of\* another, and then tauntingly adds, "You will not play the Jew nor the hypocrite," evidently insinuating that all his munificence arises from the love of ostentatious display, the publication will be libellous, Hob. 215. So where the writer pretends to hold up the characters of public men to imitation, by praising them for qualities they are charged with wanting, and which from their situations they would not be expected to possess; as if he sets forth an illiterate general as a great scholar, or a statesman accused of wanting active courage as a gallant soldier, he will be considered as imputing to them the want of those endowments as a disgrace, Hawk. b. 1. c. 73. s. 4. And the circumstance of initials being substituted for the name of the party libelled will form no excuse to the writer, if his meaning is sufficiently obvious to the reader, for it would be absurd if that which is sufficiently plain to work all the mischief of a malignant slander, and which all who read it understand, should be regarded as too obscure to be visited by justice, or understood by juries and judges; and therefore the declarations of spectators attending the exhibition of a libellous picture, may be admitted as evidence to shew that the parties intended by the figures are known to common observers, 2 Campb. 512. 5 East 463. The supposed libel must however contain unequivocal expressions of bad character.

Formerly it was said no writing could be esteemed a libel except it reflected on some individual; and that mere obscene ribaldry, without reflection on any one, is not an indictable offence, though the party might be compelled to find sureties for his good behaviour, as being a person of ill fame, Hawk. b. 1. c. 73. s. 9.; but it is quite clear that there is not the least ground for this distinction. Immoral publications are punishable—not perhaps so properly under the denominations of libels—because they tend to destroy the morality of public feeling, and to produce many of those crimes which require to be visited with more severe penalties, 2 Stra. 788. ante 46. And treatises against civil government, or hereditary right in general, are indictable upon the same principle with writings which affect individuals.

IV. *What mode of publication will excuse matter otherwise libellous.* It is certain that no allegation, however false or malicious, contained in articles of the peace, in answers to interrogatories, in affidavits duly made, or in any other proceedings in a regular course of justice, will render the party indictable as a libeller, though the offensive matter may be ordered to be struck out, with costs, 4 Co. 14. 2 Burr. 807. Hawk. b. 1. c. 73. s. 8. 1 Saund. 131. n. 1.; nor can any

thing be charged as libellous, which is contained in a petition to either house of parliament, however it may\* affect individuals, 1 Lev. 240. 1 Saund. 132.; and the reason of this is manifest, because the courts of justice and the great council of the state, are the constitutional tribunals to which grievances should be preferred, and to bring alledged wrongs under their notice, is to support and not to break the peace; since their discussion puts an end to the dispute. So no presentment of a grand jury can be libellous, Moor, 627. And it has been laid down by some of the older writers that no want of jurisdiction in the court before which a complaint is preferred, will take away this protection; because the mistake on this subject is not to be attributed to the error of the party himself, but of his legal adviser, see Hawk. b. 1. c. 73. s. 8. 1 Saund. 131. n. 1.: but it is contended by Hawkins that where it appears from the whole circumstances of the case, that the prosecution is commenced for the mere purpose of libelling, and without any intention to proceed in it, such an abuse and mockery of public justice should not become a shelter for the guilt which, in reality, they increased, id. ibid. and cases there cited. [\*870]

If a person not only charge another with improper conduct in the course of a judicial proceeding, but afterwards publish it to the world, he will be as much guilty of a libel as if it had arisen directly from the invention of its author, 1 Saund. 133. Hawk. b. 1. c. 73. s. 12. Thus a peer or member of parliament, though privileged to speak his sentiments in the house, may be guilty of a libel by publishing it, however correctly, to the world, 1 Esp. Rep. 228. And if defamatory matter, in the form of a petition to parliament be delivered to any other person except members, the circulation will be criminal, 1 Saund. 131. 1 Sid. 414. Hawk. b. 1. c. 73. s. 12. Even the mere publication of the proceedings at a public office on the examination of a party accused of a crime is illegal, especially if accompanied with observations tending to prejudice the mind of the public against him, 2 Campb. 563. And an order made by a corporation and inserted in their books, that a person against whom a jury have given large damages on an action for a malicious prosecution, has been actuated by motives of public justice, is libellous, as tending to throw discredit on judicial proceedings, 2 T. R. 199. But the delivery of printed copies to all the members and the necessary exposure of the manuscript to the compositors and other workmen concerned in printing it, are not indictable offences, 1. Lev. 240. 1. Saund. 133.

*V. Who are liable to be punished criminally for a libel, either as composers or publishers.* Without a publication of some kind, the offence of libel is not complete; but the sending a letter to the

[\*871] party himself, filled with abusive language, is indictable because it tends\* to provoke him to break the peace in order to revenge the insult he has thus received, 2 Barnard, 102. Hawk. b. 1. c. 73. s. 11. 6 East, 464.; indeed it now appears that the finding the paper in the handwriting of the defendant is such *prima facie* evidence of a publication by him, as to admit the writing to be read to the jury, 5 Burr. 2689. The mere transcribing, however, of a libel, does not amount to publication, but is a fact from which the jury may infer it according to the circumstances before them, 9 Co. 59. 3 Campb. 210. It is laid down by Lord Coke that to read a libel, or to hear it read, without a previous knowledge of its malignity, or to repeat in order to ridicule or censure it in the hearing of others, is not criminally to publish it, 9 Co. 59. b.; and it has been said that to repeat a libel in mere jest and merriment, is not an indictable offence, Moor, 627: but this may well be disputed; at least if the mirth be directed against the object and not the author of the libel, since there is nothing which tends more to exasperate than ridicule, Hawk. b. 1. c. 73. s. 14. The party who writes a libel dictated by another, with discretion to understand its nature—he who originally procures it to be composed—he who actually composes it—he who prints or procures it to be printed—he who publishes or causes it to be published, all, in short, who assist in framing or in diffusing it, are implicated in the guilt of the offence, 1 Salk. 417. Hawk. b. 1. c. 73. s. 10. 2 Campb. 512. but see 3 Campb. 323. And it is no excuse for a printer or publisher, that he was ignorant that he was affording the means of circulating; and even though he is absent from the office or shop at the time, he will be held criminally liable, 20 St. Tr. 803. and see Cuthell's case, Ersk. Speeches, and Lovell's case, and 3 M. and S. 11, 12, &c.

Modes of  
prosecu-  
tion.

*Modes of prosecution.*—In cases where the libel is directed against the king or his government, the offender is usually prosecuted by *ex officio* information in the king's bench, filed by the attorney general: the modes of proceeding in which case are detailed in the first volume. When the slander more immediately affects an individual, he may either prefer a bill of indictment in the usual course, or move for leave to file a criminal information in the crown-office: but the court will exert a discretionary power in deciding whether they will thus sanction a prosecution, and will frequently deny it where an indictment might well be supported. Thus, where the application is made a long time after the publication complained of, where too great strictness would discourage useful investigations, or where the libellous matter is true, an information will not be granted: 1 Stra. 498. Andr. 290. and therefore where the libel contains a direct charge which it

lies in the\* power of the applicant to deny if false, the court will require a positive affidavit that the charge is unfounded: Dougl. 284. but where the person slandered is in a foreign country at a great distance so that he cannot make affidavit, where the allegations of the libel go to general character and not to particular facts, to which it would be absurd to require a denial, where the imputation is of seditious language in parliament, which no one can impute, because nothing that passes there is liable to question, such affidavit will not be required. Dougl. 387. ante 1 vol. 857. An indictment seems, however, to be the most easy, as it is the most constitutional remedy. [\*872]

*Indictment or Information.—Venue.* It seems that, in case of a libellous letter, the venue may be laid either in the county where it was written and put into the post-office, or in that where it was delivered to the party to whom it was addressed. 1 Campb. 215. 2 Campb. 506. 1 Leach, 143. But the post-mark is not sufficient evidence of a publication in the county whence it is supposed to come on account of the possibility of forgery. 1 Campb. 215. Nor is a mere acknowledgment of the defendant in the county where the venue is laid sufficient to give the court jurisdiction to determine the charge. 7 East, 68. If, however, a person in Ireland procure another to publish a libel in Westminster, he may be indicted in Middlesex. 7 East, 68. 3 Smith, 97. 9. 1 Esp. Rep. 63. 6 East, 589, 590. Indictment.

*Charge, &c.* In an indictment for a libel against a particular individual, his name should be inserted; for if it be stated merely as against certain persons, the proceedings will be invalid. When two persons are guilty of the publication of a libellous song, by singing at the same time, they may be joined in the same proceedings. 2 Burr. 983. It is proper to charge that the defendant composed, printed, and published a libel, because if it appears that he did either, the indictment will be sufficiently supported: ante 1 vol. 251, 296. 2 Campb. 584, 646. but if it be stated in the disjunctive that he composed, &c. or caused to be composed, the allegation will be too uncertain. 8 Mod. 330. ante 1 vol. 236. There is no occasion to allege that the offence was committed with *force and arms* since the publication of a libel is not a breach of the peace, but only tends to produce it. 7 T. R. 4. Nor is it necessary to state that it was done *falsely*, because falsehood is no requisite of libel, id. ibid. and if it were, the inference would be that the calumny was false till the contrary appear; but the word *maliciously*, or *falsely*, or some other epithet equivalent to it has been holden to be material. Charge, &c.

But the most important part of the indictment is, the set-

[\*873] ting forth\* the matter charged as libellous. (n) Such circumstances should be previously stated by way of *inducement* as will be necessary to explain its meaning; and the whole should be so explained by *innuendoes* as to charge its import as scandalous and criminal. The nature and office of innuendoes must therefore become the objects of a short inquiry. Style, 392. An innuendo is an averment to explain the defendant's meaning by reference to matter previously introduced into the proceedings. It is necessary only where the intent may be mistaken, or where it cannot be collected from the libel itself. Cowp. 679, 683. 5 East, 463. The practice of overloading the record with innuendoes to explain facts which need no explanation has been recently censured by Lord Ellenborough, who observed that it seemed to proceed on the supposition that the court had no discernment, and the jury no understanding. It is necessary where the words of a writing are general, ironical, or spoken by way of allusion or inference, so that though any man reading it will perceive its offensive meaning, it is by connecting it with some facts or associations not expressed in words but which they necessarily present to the mind. In this case an explanation must be put on the record; because the jury can take cognizance of nothing but what is there stated with legal precision. Cowp. 683. This certainty, it is the object of an innuendo to mark out with the utmost distinctness. It is only explanatory of matter already expressed, which it applies to the part that is ambiguous; but it neither alters nor enlarges the sense of previous averments. 2 Salk. 513. 1 Saund 243. n. (4.) Not only is it unable to create that which did not exist, but it cannot render that certain that before was doubtful, or make that clear which was previously obscure. 5 East, 469. Its simple object is to reduce a natural to a legal certainty: it signifies no more than *id est*, or *scilicet*, that such a person means a particular person, or such a thing a particular thing, and must have precedent matter to which it refers. 4 Co. 17 b. Every thing, therefore, intended to be thus alluded to must be stated previous to the innuendo, which is to apply it to the matter charged as libellous. 8 East, 427. 6 T. R. 691. Thus, it is erroneous to charge that the defendant said of another, he burnt my barn, adding by way of innuendo, "meaning, my barn full of corn," because this is not an explanation of what was said before, but an addition to it. 4 Co. 20. a. But had it been averred in the introduction that the defendant had a barn full of corn, and that in a conversation

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(n) As to the meaning of the terms used to preface the statement, see "purport," "tenor," &c. which are 1 vol. 233, 4, 5.



respecting that barn the words were uttered, the innuendo\* would have been good, and by coupling the libel with the inducement, the sense would have been complete. Cowp. 684. Thus also where in an information for a libel on the justices of Suffolk, it was not stated that the libel was "of and concerning the justices of Suffolk; but an innuendo was introduced averring that certain orders mentioned in the writing, meant orders made by the justices of the peace for the county of Suffolk, the judgment was arrested. Sayer, 280. But had the libel been stated to be of and concerning the justices of Suffolk, or had the libel itself said in any part, that the order was made by the justices, the proceedings would probably have been holden valid: for in Horne Tooke's case, where he was charged in an information with a libel in publishing that Americans had been inhumanly murdered by the king's troops, which was averred to be "of and concerning his majesty's government and the employment of his troops," it was moved in arrest of judgment that there was no averment or innuendo to shew that the employment of the troops was by the king's authority, but it was holden sufficient with reference to the introduction: Cowp. 672. 11 Harg. St. Tr. 291. so where a libel prosecuted respected the management of the navy, and in the introductory part it was described as "of and concerning the royal navy of this kingdom and the government of the said navy." Though the term *navy* in libel was only explained by the innuendo as "meaning the royal navy of this kingdom," the information was holden proper. 5 Harg. St. Tr. 590. A similar determination took place in *The King, v. Matthews*, where the words of the seditious matter were "from the solemnity of the chevalier's birth; and if hereditary right be any recommendation, he has that to plead in his favour;" the indictment charged them to have been written "of and concerning the pretender," and "of and concerning his right to the crown of Great Britain;" and the innuendoes on the term "*chevalier*," &c. referred to this introductory averment; the charge was regarded as having been specified with sufficient precision. 9 Harg. St. Tr. 682. And whenever the innuendo is erroneous in consequence of its going beyond its office, if the libel be clear to a common intent without it, the defective part may be rejected as surplusage. 8 East, 427. Cro. Car. 512. Cowp. 275. 5 East. 463.

It may be collected from the cases on the subject of innuendoes that it is very material to state that the libel was of and concerning the party intended. If the libel be in a foreign language, it should be set forth in such language as written, and though it is usual to add a translation, this is said not to be requisite or safe; it is however, the practice

[\*875] to insert the translation. 6 T. R. 162. 1 Saund. 242. ante 2 vol. 52. n. (1.) It is not necessary\* to set forth the whole of the paper in which the libellous matter is contained, but those parts may be selected which are most offensive: 2 Salk. 417. but then those parts which are separated by intervening matter ought not to be set forth as if they were continuous, but should be stated in a certain part of which said libel there was and is contained, &c. and "in a certain other part of the said libel, there was and is contained, &c." setting forth the words respectively charged as criminal. 1 Campb. 353. The libel ought to be set forth with all possible correctness; for any variation in the sense, between the matter charged and that proved will be fatal: 1 Campb. 352. but the mere alteration of a single letter, so long as it does not change one word into another, will not vitiate, though even so small a variance, if it rendered the meaning different, would make the whole invalid. 1 Leach, 145, 133. Dougl. 193, 4. ante 1 vol. 293, 4, 5.

What evidence sufficient.

*Evidence.* Before the prosecutor can be admitted to read the paper charged as libellous, he must give prima facie evidence of a publication by the defendant. This may be either positive in itself or be inferred from facts which are not conclusive. Proof that the defendant took part in a procession carrying the party injured in effigy to render him ridiculous, that he distributed the libel himself, or that he maliciously read or sung the offensive matter in the presence of others, is evidence of the former kind and establishes a publication which cannot be repelled. 5. Co. 125. b. Moor, 813. Evidence of the latter kind is where the paper is shewn to be in the hand writing of the defendant; for though this may not amount to a publication, it will suffice to throw on him the burden of proving the negative, 1 Ld. Raym. 417. 4 Esp. Rep. 248. ante 871. The important question respecting the nature and degree of proof that a particular writing is in the hand of an individual, will be found discussed in 1 vol. Where the indictment is against a bookseller for the vending and publishing, it will be sufficient for the prosecutor to establish that the work was purchased at the shop of the party accused; and it will lie on him to shew, if he can, that they were sent there without his knowledge, by accident, or collusion—if, indeed, such a defence would at all avail him: 5 Burr. 2686. and see Cuthell's case, 5 Ersk. Speeches. 2 Sess. Cas. 33. Hawk. b. 1. c. 73. s. 10. Where the libel is printed in a newspaper, proof that the defendant gave a bond to the stamp-office for the duties on the advertisements and the stamps, and had occasionally applied there respecting the duties, is presumptive evidence that he is the proprietor, and as such, liable to answer for the contents of the paper which he has the power to control. 4 T. R. 126. and see evidence.

38 Geo. III. c. 78. s. 11. 3 Campb. 99. This is all the evidence that the prosecutor generally adduces, unless the paper is libellous only\* with reference to circumstances which it is necessary for the jury to hear from witnesses; for we have seen that the malicious intent is inferred from the evil tendency of the paper in question; as wherever the act is in itself unlawful, the proof of justification or excuse lies on the defendant. 5 Burr. 2667. 4 T. R. 126. [\*876]

Where the defendant having exhibited a libellous paper, refuses on the trial to produce it after notice for that purpose, parol evidence may be given of its contents, even in case of treason. 2 T. R. 201. 6 Harg. St. Tr. ante 1 vol. 287, 8. And a newspaper may be given in evidence though it is not one of the copies published, and though it is unstamped at the time of trial. Peake, N. P. 75. Evidence of authorship may be given by the printer, if he swears that he received the manuscript from the defendant and delivered it to him; but if he merely delivered it to a servant of his own who gave to one of the defendants, the proof will not suffice to charge the party as composer. *id. ibid.* Depositions taken before a magistrate are not evidence under 1 and 2 Ph. and M. c. 13. 2 and 3 P. and M. c. 10. because those provisions extended only to cases of felony. 3 Mod. 163. And though an extra-judicial confession may be given in evidence, the defendant is entitled to have the whole read, that he may have the benefit of such part as is in his favour. *id. ibid.* And he will be permitted to read an extract from the same paper, on the same subject with the alleged libel, though at a distance from it, in order to explain the design with which the latter was written: 2 Campb. 398. but if he confess himself the author of a paper, errors of the press, and small variations excepted, the court will receive the declaration in evidence and compel him to shew what the differences are to which he alluded. When the indictment avers that addresses were presented to the king, the gazette may be given in evidence to shew that the statement is accurate. 5 T. R. 536.

*Verdict.* For a long time it was warmly contested, who were the proper judges of the libellous character of the matter charged, the court or the jury. Cases there unquestionably are, in the earliest times, in which the criminality of the defendant has been left entirely to the jury with proper directions from the judge—as in the case of murder, where the nicest questions of law are often involved as to the degree of the prisoner's guilt. 3 Harg. St. Tr. 37. and see 1 Ersk. Spec. But it was repeatedly held by Lords Raymond, Mansfield and Kenyon, that the jury had no question submitted to them but the facts of writing, printing or publishing, and the truth of the innuendoes inserted in the proceedings: if they believed these, they were to

[\*877] find the defendant guilty ; so that with the guilt or innocence of the party they had no concern. 1 Barnard. 304, 5, 6. 9 Harg. St. Tr. 255.\* 3 T. R. 428. and in notes. 5 Burr. 2661. 1 Erskine's Speeches. This strange anomaly was so ably exposed by Mr. Erskine in the case of the dean of St. Asaph, that, in consequence of his exertions, the 32 Geo. III. c. 60. has entirely done it away. That statute is entitled, " An act to remove doubts respecting the functions of juries in cases of libel ;" and after reciting that " doubts have arisen, whether on the trial of an indictment, or information for the making or publishing any libel where an issue or issues are joined between the king and the defendant or defendants, on the plea of not guilty pleaded, it be competent to the jury impanelled to try the same to give their verdict on the whole matter in issue," proceeds to *declare* and enact " that on every such trial the jury sworn may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information ; and shall not be required or directed by the court or judge before whom such indictment or information shall be tried, to find the defendant or defendants guilty merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information." But it is provided that the court shall direct the jury according to their discretion, as in other criminal cases ; that the jury shall have the same liberty as in other offences of finding a special verdict, and the defendant the same right of moving in arrest of judgment which was allowed him before the passing of the statute.

**Judgment.** *The judgment* is in the discretion of the court as in case of most other misdemeanours : it usually consists of fine, imprisonment and the finding sureties to keep the peace after the defendant is set at liberty. To these, in case of blasphemy and sedition, the pillory has sometimes been added, 5 Co. 125. b.

## INDICTMENTS, &c. FOR LIBELS.

**For a libel on the king. (o)** That C. D. late of, &c. not having the fear of God before his eyes, but being moved by the instigation of the devil, and falsely and maliciously contriving and intending to bring our said lord the king into hatred and infamy, amongst his subjects, and to move sedition amongst the subjects of our said

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(o) See similar precedent, Williams J. Libel. ante 2 vol. 94 to 101. and general note ante 866 to 877.

lord the king, did, on, &c. with force\* and arms, at, &c. [ \*878 ]  
 aforesaid, falsely, seditiously, and maliciously write and publish, and cause to be written and published, a certain false, seditious, and scandalous libel, entitled, &c. in which said libel are contained, among other things, divers false, seditious, scandalous and malicious matters, according to the tenor following, to wit, [*here set out libellous matter with innuendoes*] and in another part of the same libel are contained divers other false, seditious, scandalous and malicious matters, according to the tenor following [*here set out the other libellous matter with proper innuendoes*] to the evil example, &c. and against the peace, &c.

[Commencement of information, as ante 6.] That in Hilary term, in the twenty-second year, &c. in the court of our said lord the king, before the king himself at W. the right honourable William, earl of Mansfield, then and there being chief justice of the said court, and present therein, one John Hill was brought into the said court in custody of the keeper of his majesty's gaol at W. in the county of S. by virtue of his majesty's writ of habeas corpus, before that time issued out of that court for that purpose; and the said keeper did then and there certify to the said court of our said lord the king, before the king himself; that he the said J. H. on, &c. was committed unto the custody of B. S. esquire, sheriff, and of him the said keeper, by virtue of a warrant under the hand and seal of G. H. gentleman, coroner for the borough of P. in the said county, by which warrant he the said J. H. was committed as being, by an inquisition of twelve good and lawful men of the liberties of the said borough of P. duly taken before him as coroner for the said borough, found guilty of feloniously and wilfully killing and murdering one P. L. at, &c. within the said liberties, on, &c. then last past; and the said attorney general, for, &c. giveth, &c. that upon reading the depositions taken before the said G. H. coroner for the said borough of P. of the body of the said P. L.; and upon reading the affidavits, and hearing of counsel on both sides, it was then and there ordered by the said court of our said lord the king, before the king himself at W. that he the said J. H. having then in the said court given a recognizance for his personal appearance at the then next assizes and general gaol delivery, to be holden in and for the said county of S. should be discharged out of the custody of the said keeper, on the account aforesaid; and the said attorney general, of, &c. for, &c. giveth, &c. that L. K. of, &c. in, &c. printer, well knowing the premises, being a person of a depraved and wicked mind and of\* a malicious temper and dispo- [ \*879 ]

At common law for a libel upon the judges of K. B. in their official character, tending to prejudice them and influence a jury on indictment for murder. (p)

(p) See precedent 4 Wentw. 414. and general note ante 866 to 877.  
*Crim. Law.*

Second  
count.

[\*880]

sition, disregarding and despising the laws of this realm, and most unlawfully, wickedly, maliciously and deliberately devising, contriving and intending to traduce, vilify, and bring into contempt and detestation the judges of the said court of our said lord the king, before the king himself, and particularly the said W. earl of Mansfield, chief justice of the said court, and to insinuate, and as far as in him the said L. K. lay, to cause it to be believed, that the judges of the said court of our said lord the king before the king himself, and particularly the said W. earl of M. so being such justice, had acted arbitrarily, partially and corruptly, in admitting the said J. H. to bail as aforesaid, and had done that, which by law they were not warranted to do; and further most unlawfully, &c. devising, &c. the minds of the jurors who should be returned and impanelled for the trial of the said J. H. at the said then next assizes and general gaol delivery, to be holden in and for the said county of S. against the said J. H. and unjustly and wickedly to cause the said jurors to find the said J. H. guilty of the crime of murder, in killing the said P. L. aforesaid, that is to say, on, &c. in the twenty-second year, &c. with force and arms, at, &c. in, &c. most unlawfully, wickedly and maliciously did print and publish, and cause and procure to be printed and published in a certain newspaper entitled *The Hampshire Chronicle*, printed by L. Kent and W. Mowbray, Portsmouth, number 181. Monday, March 4, 1782, of and concerning the said admission to bail of the said J. H. as aforesaid, and of and concerning the judges of the court of our said lord the king before the king himself, and of and concerning the said W. earl of M. so being such chief justice as aforesaid, in his office of chief justice as aforesaid, and also of and concerning the said J. H. a certain false, wicked, scandalous, infamous and malicious libel in the form of a letter, according to the tenor following, that is to say, &c. &c. [*recite the letter*] to the great scandal, infamy and disgrace of the judges of the said court of our said lord the king before the king himself, and particularly of the said W. earl of M. so being such chief justice as aforesaid, in manifest perversion and violation of the laws of this realm, and to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown, and dignity. And the said attorney general, of, &c. for, &c. giveth, &c. that in Hilary term in the 22nd year, &c. in the court of our said lord the king, before the king himself at W., J. H. was by the said court delivered to bail, (the said W. earl of M. then and there being chief justice of the said court, and presiding therein) upon a writ of habeas corpus, *ad subjiciendum*, for his personal\* appearance at the next assizes and general gaol delivery to be



holden at W. in and for the county of S. to answer all such matters and things as on his majesty's behalf should then and there be objected against him, and not to depart the court without leave, the said J. H. before such delivery to bail, having been in the custody of the keeper of his majesty's gaol at W. in the said county of S. by which the said J. H. was committed as being by an inquisition of twelve good and lawful men of the said borough found guilty of the wilful murder of P. L. And the said attorney general, of, &c. for, &c. giveth, &c. that the said L. K. well knowing the premises last aforesaid, but being such a person as aforesaid, and most unlawfully, &c. devising, &c. to traduce, vilify and bring into contempt and detestation, the right honourable W. earl of M. chief justice of our lord the king, assigned to hold pleas before the king himself, to insinuate, and as much as in him the said L. K. lay, to cause it to be believed that the said W. earl of M. so being such chief justice as last aforesaid, had acted arbitrarily, &c. in consenting to admit the said J. H. to bail as aforesaid, and had done that which by law he was not warranted to do, afterwards that is to say, on, &c. in the twenty-second year aforesaid, with force and arms, at, &c. in, &c. most unlawfully, &c. did publish, and cause and procure to be published in a certain newspaper called *The Hampshire Chronicle*, No. 181. Monday, March 4, 1782, a certain other false, &c. libel, in which said last mentioned libel, of and concerning the said W. earl of M. in his office of chief justice as last aforesaid, are contained, divers false, &c. matters, that is to say, in one part thereof, according to the tenor following, to wit, &c. &c. &c. to the great scandal, &c. as before. And the said attorney general, of, &c. for, &c. giveth, &c. that on Tuesday next after the Purification of the blessed Virgin Mary in Hilary term, in the 22nd year, &c. J. H. being brought into the said court, in custody of the keeper of his majesty's gaol at W. in the county of S. by virtue of his majesty's writ of habeas corpus, for that purpose issued out of the said court, the said keeper did certify to the said court of our said lord the king, before the king himself, that he the said J. H. on, &c. was committed into the custody of B. S. esquire, sheriff, and of him the said keeper, by virtue of a warrant under the hand and seal of G. H. gentleman, coroner for the borough of P. in the said county, by which warrant he the said J. H. was committed as being, by an inquisition of twelve good and lawful men of the liberty of the said borough of P. duly taken before him as coroner for the said borough, found guilty of feloniously and wilfully killing and murdering one P. L. at, &c. within the said liberties, on, &c. And the said\* attorney general, of, &c. for, &c. giveth, &c. that he the said J. H. was then and there by the said court of our said

Third  
count.

[\*881]

lord the king, before the king himself, delivered to bail for his personal appearance at the then next assizes and general gaol delivery to be held at W. in and for the said county of S. to answer all such matters and things as on his majesty's behalf should then and there be objected against him; and the said attorney general, of, &c. for, &c. giveth, &c. that the said L. K. being such person as aforesaid, and most unlawfully, &c. devising, &c. to influence and prejudice the minds of the jurors, who should be returned and impanelled for the trial of the said J. H. at the said then next assizes and general gaol delivery to be holden in and for the said county of S. against the said J. H. and unjustly and wickedly to cause the said jurors to find the said J. H. guilty of the crime of murder, in killing the said P. L. afterwards, that is to say, on, &c. in the twenty-second year, &c. with force and arms, at, &c. most unlawfully, &c. did publish, and cause and procure to be published in a certain newspaper, entitled, *The Hampshire Chronicle*, No. 181. Monday, March 4, 1782, a certain false, &c. libel, in the form of a letter, addressed to the right honourable the E—l of M——d, (meaning the earl of Mansfield) in which said last mentioned libel, of and concerning the said J. H. are contained divers false, &c. that is to say, in one part thereof, according to the tenor following, to wit, &c. &c. &c. to the great damage and prejudice of the said J. H. in manifest perversion of the laws of this realm, in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

For utter-  
ing sedi-  
tious  
words of  
the king.  
(g)

[\*882]

That A. B. late of, &c. labourer, being a wicked, seditious and evil disposed person, and greatly disaffected to our said lord the king, and contriving and intending the liege subjects of our said lord the king to incite and move to hatred and dislike of the person of our said lord the king, and of the government established within this realm, on, &c. with force and arms, at, &c. in the presence and hearing of divers liege subjects of our said lord the king, maliciously, unlawfully, wickedly and seditiously did publish, utter and declare with a loud voice, of and concerning our said lord the king, these words following, that is to say, his majesty George the third, I (meaning the said A. B.) hope he (meaning our said lord the king) will soon be no more, damnation to\* all royalists. To the great scandal of our said lord the king, in contempt of our said lord the king and his laws, to the evil and pernicious example of all the others in the like case offending, and

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(g) See a similar precedent, *Starke*, 625. ante 2nd vol. 97. and general note ante 866 to 877.

against the peace, &c. [*Second count.*] That the said A. B. being such wicked, seditious and evil-disposed person as aforesaid, and greatly disaffected to our said lord the king, and contriving and intending the liege subjects of our said lord the king to incite and move to hatred and dislike of the person of our said lord the king, and the government established within this realm, on, &c. with force and arms, at, &c. unlawfully, wickedly, maliciously and seditiously, in the presence and hearing of divers liege subjects of our said lord the king again did publish, utter and declare, of and concerning our said lord the king and his good, true and faithful subjects, these words following, that is to say, I (meaning the said A. B.) hope king George the third, (meaning our said lord the king) will soon be no more, damnation to all royalists. [*Conclusion as before.*]

Second  
count.

[Commencement of information as ante 6.] That J. H. late of, &c. and L. H. late of, &c. being malicious and evil disposed persons, and unlawfully and maliciously contriving and intending to traduce, defame and vilify his royal highness George Augustus Frederic, Prince of Wales, Regent of the united kingdom of Great Britain and Ireland, and to bring his said royal highness into great and public hatred and contempt and disgrace amongst the liege subjects of our said lord the king, heretofore, to wit, on, &c. at, &c. unlawfully and maliciously did compose, print and publish and cause and procure to be composed, printed and published, (s) a certain scandalous, malicious and defamatory libel, of and concerning his said royal highness, according to the tenor and effect following, that is to say, &c. [*here the libel was set out with innuendoes,*] to the great scandal and disgrace of his said royal highness, in contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c. [*Conclusion of information as ante 6.*]

Information by the attorney general for a libel on the Prince Regent. (r)

That on, &c. and continually from thence, until, and at the several times of the printing and publishing the false, scandalous, malicious and defamatory libels hereinafter mentioned, C. D. was and\* still is ambassador extraordinary, and plenipotentiary of his royal highness the Prince Regent of Portugal, at the court of London, to wit, at the parish of St. Cle-

[\*883] For a libel in the Portuguese language on the Portuguese, ambassador and the

commercial agents of the Prince Regent of Portugal, imputing dishonesty in the performance of their official duties. (t)

(r) This was the information against Leigh and John Hunt, editor and printer of the Examiner, obtained from the crown-office. The defendants were convicted and sentenced to two years' imprisonment, to pay a fine of 500 pounds each, and to find sureties for two years.

See general note ante 866 to 877.

(s) No evidence was given of composition; and it was held immaterial, 2 Campb. 583.

(t) Obtained from the crown-office, see form ante 2nd vol. 51. and general note ante 856 to 867.

ment D. in the county of M. and that on, &c. at, &c. aforesaid, the said C. D. did nominate and appoint E. F. of L. merchant, and G. H. of the same place, merchant, to be the directors and administrators of the general mercantile, and pecuniary affairs, in L. aforesaid, of the said prince regent of P. provisionally, and until the pleasure of the said Prince Regent should be signified to the contrary, and the said E. F. and G. H. then and there undertook to be the directors and administrators of the general mercantile, and pecuniary affairs in L. aforesaid, of the said Prince Regent of P. and to perform the duties of directors and administrators as aforesaid, for one year thence next following, if they should so long be continued to be such directors and administrators as aforesaid, without any reward for the performance thereof; and that the said E. F. and G. H. on the said, &c. and from that time continually afterwards, until, &c. of our said lord the king, at the parish aforesaid, in the county aforesaid, were the directors and administrators of the general, mercantile and pecuniary affairs in L. aforesaid, of the said Prince Regent, and during all that time, there faithfully and honestly demeaned and employed themselves in divers mercantile and pecuniary affairs in L. aforesaid, of the said Prince Regent; and the jurors, &c. do further present, that, afterwards to wit, on the said, &c. at, &c. aforesaid, the said C. D. did nominate and appoint I. K. of L. merchant, to be jointly with the said E. F. and G. H. the directors and administrators of the general mercantile and pecuniary affairs in L. aforesaid of the said Prince Regent, and the said E. F., G. H. and I. K. then and continually afterwards, from that time until the time of printing and publishing the false, scandalous, malicious and defamatory libel hereinafter next mentioned, at the parish aforesaid, in the county aforesaid, were and still are the directors and administrators of the general mercantile, and pecuniary affairs in L. aforesaid, of the said Prince Regent, and during all that time there did, and still do, faithfully and honestly demean and employ themselves in divers mercantile and pecuniary affairs in L. aforesaid, of the said Prince Regent. And the jurors, &c. do further present, That A. B. late of, &c. well knowing the premises aforesaid, but unlawfully, wickedly and maliciously contriving and intending to defame, scandalize and vilify the said C. D. and the said E. F., G. H. and I. K. and to falsely represent and make it be believed, not only by divers of the liege subjects of our said lord the king, but also by the said Prince Regent of P. and the subjects of P. that the said C. D. and the said E. F., G. H. and I. K.\* were corrupt persons, and acted corruptedly in and concerning the mercantile and pecuniary affairs in L. of the said Prince Regent, and thereby to bring them into great scandal, infamy and disgrace, on, &c. with force and arms, at, &c.

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aforesaid, unlawfully, injuriously, wickedly and maliciously did print and publish, and cause and procure to be printed and published, a false, scandalous, wicked and malicious libel, containing therein, (among other things) certain false, scandalous and malicious matters in the Portuguese language, and the Latin language, of and concerning the said C. D. and the said E. F., G. H. and I. K. and their conduct in and concerning the mercantile and pecuniary affairs in L. of the said Prince Regent, to the tenor following, to wit, [*here the Portuguese and Latin words were recited,*] which said false, scandalous and malicious words, in the Portuguese and Latin languages hereinbefore mentioned and set forth, being translated into the English language, were and are of the same signification and meaning, as these English words following, that is to say, [*here the English translation was set forth, with innuendoes,*] to the great damage, scandal, infamy and disgrace of the said, &c. in contempt, &c. to the evil example, &c. and against the peace, &c.

[Commencement of information as ante 7.] That long before and at the time of the composing, printing and publishing of the several scandalous and malicious libels and libellous prints hereinafter mentioned, and also long before, and at the several times and occasions, in and by the said libels and libellous prints mentioned and alluded to, W. G. esquire, was a counsellor at law, and was also one of his majesty's counsel learned in the law, and as such counsellor, was retained and employed in prosecuting and defending divers causes and suits, in divers of his majesty's courts at law, for our said lord the king, and divers of the liege subjects of our said lord the king, to the benefit and advantage of our said lord the king, and the same subjects, to the advancement and promotion of justice within this realm, and to the honour and emolument of him the said W. G. to wit, at, &c. And that before the times of the composing, printing and publishing of the several scandalous and malicious libels, and libellous prints, in the first and second counts of this information hereafter mentioned, to wit, on, &c. at, &c. a certain action, wherein one J. W. was plaintiff, and one S. C., W. P., W. C. and J. B. were defendants, came on to be tried by a jury of the said county of M. before the right honourable Lloyd, lord Kenyon, the chief justice of our said lord the king,\* assigned to hold pleas in the court of our said lord the king, before the king himself, R. K. gent. being associated unto the said C. J. according to the form of the statute in that case made and provided, and that upon that occasion the said

Information in name of master of crown-office for libelling Sir W. Garrow in his conduct of a cause. (u)

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(u) This precedent was obtained from the crown-office, see general note ante 866 to 877.

W. G. was then and there retained and employed, and appeared and spoke as counsel for the said J. W. and then and there behaved and conducted himself as such counsel as aforesaid, on the occasion aforesaid, with great probity and integrity, and with a due and earnest intention to the interest of his client the said J. W. and to the demands of law and justice, to wit, at, &c. aforesaid; nevertheless one J. R. late of, &c. well knowing the premises aforesaid, but unlawfully and maliciously devising and intending to traduce, vilify, and defame the said W. G. in his character and conduct as such counsel as aforesaid, and to expose him to great and public ridicule, hatred and contempt, and to insinuate and cause it to be believed that the said W. G. had, on the occasion of the said action, which so came on to be tried as aforesaid, behaved and conducted himself as such counsel for the said J. W. in a negligent, base, and dishonorable manner, and had negligently and basely deserted, neglected, abandoned, and betrayed, not only the interest of his client the said J. W. but also the demands of law and justice, and thereby to injure, aggrieve, and prejudice the said W. G. in his aforesaid profession, and to deprive him of the emoluments and honour by him theretofore derived therefrom, and enjoyed therein, and also to extort, demand, obtain and receive, of and from the said W. G. divers large sums of money, as an inducement to him the said R. to forbear and abstain from mentioning, printing and publishing the name of him the said W. G. in a second edition of the libel hereinafter next mentioned, as the person denoted and alluded to, in and by the same libel, on, &c. at, &c. unlawfully and maliciously did compose, print and publish, and cause and procure to be composed, printed, and published, a certain scandalous and malicious libel, of and concerning the said W. G. and his character and conduct as such counsel as aforesaid, and of and concerning the said action, which so came on to be tried as aforesaid; and the character and behaviour of the said W. G. on that occasion, and the speech by him then and there made and delivered as such counsel of the said J. W. as aforesaid, in which said libel was and is contained, a certain scandalous and malicious print, relating and alluding to the said action, and to the conduct, speech and behaviour of the said W. G. as such counsel of the said J. W. on that occasion, and exhibiting amongst other things the figures of persons, that is to say, several children and a man leading by a rope a certain other figure in the dress of a counsellor\* at law, which said last mentioned figure represented, and was meant to represent the said W. G. and from the mouth of which said last mentioned figure, the following words were and are represented to issue and proceed that is to say, " Good Sir, pray let me loose

[\*886]



that I may hide myself, and never again bawl nonsense, and then fall dumb in a poor man's cause." And in which said libel were and are also contained divers scandalous and malicious matters of and concerning the said W. G. and his character and conduct as such counsel as aforesaid, and of and concerning the said action which so came on to be tried as aforesaid, and the conduct and behaviour of the said W. G. on that occasion, and the speech by him the said W. G. then and there made and delivered as such counsel of the said J. W. as aforesaid, in one part thereof, to the tenor and effect following, that is to say, "it (meaning the aforesaid speech of him the said W. G.) was a speech, and when you've said that, that's all, for it was not for his client, (meaning the said J. W.) upon my soul it was not the dying speech, but pause! indeed it was so to the spirit of the laws! for if such is both sustained and approved, Have mercy upon us, O my good Lord! for we are at the disposal of every base wretch," &c. &c. [*here a part of the libel was stated.*] And in another part thereof, to the tenor and effect following, that is to say, "Thou (meaning the said W. G.) disgrace to man, was thy conscience so scared, That thou neither for justice nor the poor man car'd," &c. And in another part thereof, according to the tenor and effect following, that is to say. "Nay, I'll even go further, not dreading defeat, And both in rhyme and reason throw out a threat, That unless the wretch, (meaning the said W. G.) who committed the offence Against the laws of God, man and common sense, Shall atone for his crime by making restitution, His name appears at full length in my second edition, Which shall go from end to end of this noble nation. My expenses out of my pocket, my trouble he cannot pay, The poor man's loss and a fine another way, To the unfortunate women who have gone astray," &c. &c. in contempt of our said lord the king and his laws, to the great prejudice of the said W. G., to the evil example, &c. and against the peace, &c. And the said coroner and attorney, &c. that the said J. R. well knowing the premises aforesaid, but again unlawfully and maliciously, devising and intending to traduce, vilify and defame the said W. G. and his character and conduct as such counsel as aforesaid, and thereby to injure him in his aforesaid profession, an, &c. at, &c. unlawfully and maliciously, did compose, print and publish, and cause to be composed, printed and published, a certain other scandalous and malicious libel, containing therein, divers\* other scandalous and malicious matters, of and concerning the said W. G., and his character and conduct as such counsel as aforesaid, and of and concerning the said action, which so came on to be tried as aforesaid, and the conduct and behaviour of the said W. G. on

Second  
Count.

[\*887]

that occasion, in the speech by him then and there made and delivered, as such counsel of the said J. W. as aforesaid, in one part thereof to the tenor and effect following, that is to say, "Westminster Hall in an uproar, or a counsel (meaning the said W. G.) detected in knavery. This day is published, &c." [*There were four counts containing other libellous matter in each.*] In contempt, &c. to the great prejudice, &c. to the evil example, &c. and against the peace, &c. [*usual conclusions as ante 2nd vol. 7.*]

Information  
against  
the printer of a  
newspaper for  
publishing  
an advertisement  
by a married woman  
offering to become a  
mistress.  
(v)

[Commencement of information as ante 6.] That P. S. late of London, printer, being a person of a wicked and depraved mind and disposition, and most unlawfully and wickedly, contriving and intending to bring the state of matrimony into public discredit, hatred and contempt, and to corrupt the morals of the subjects of our said lord the king, and to move and excite the same subjects to the commission of the crimes of fornication and adultery, on, &c. with force and arms, at, &c. did unlawfully and wickedly, print and publish, and cause to be printed and published, in a certain public newspaper, called the Daily Advertiser, Oracle and True Briton, a certain wicked and mischievous libel, in the form of an advertisement, which said wicked and mischievous libel is to the tenor and effect following, that is to say, "Marriage is to some a happy state, to others the reverse, the unfortunate writer of this is placed in the latter situation, lately united to one of a disposition of the contrary to herself, she is lively and young, and now so very miserable, that she hopes this will meet with pity and not censure from the other sex. The person to whom it is addressed must be a gentleman possessed of fortune, generosity, agreeable deportment, and be resolved to keep this an inviolable secret. Before he will be permitted to pass any private hours he must present the lady with 100*l.* (meaning one hundred pounds,) and settle a yearly income on her, to take place one twelvemonth after the acquaintance has commenced. Any gentleman favouring the lady with his address, and appointing an interview for any evening, from seven to nine this week, after Tuesday, will meet with the strictest attention, as well as all other letters: those that are not post-paid will be returned. Direct to Mrs. Smith, to be left at No. 19, Fetter-lane, Fleet Street." To the high displeasure of Almighty God, ~~to~~ the scandal\* and reproach of the christian religion, in contempt, &c. to the great offence of all civil government, to the evil and pernicious example, &c. and against the peace, &c. And the said attorney-general, &c. prosecutes for our said lord the king, that the said P. S. being such person as aforesaid, and fur-

(v) This was the information a- crown-office. See, also, general  
gainst Stuart, obtained from the note ante 866 to 877.

ther contriving and intending as aforesaid, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully, wickedly and corruptly, print and publish, and cause to be printed and published, a certain other wicked and mischievous libel to the tenor and effect following, that is to say, Marriage, &c. [*here set out the libel as in first count,*] to the high displeasure, &c. [*conclude as before.*]

The jurors for our lord the king upon their oath present, that C. D. late of, &c. being a person of an evil, wicked and malicious mind and disposition, and unlawfully, wickedly and maliciously devising, contriving and intending, as much as in him lay, to scandalize, vilify and defame one A. B. and to bring him into public scandal, infamy and disgrace, and to injure, prejudice and aggrieve him the said A. B., on, &c. with force and arms, at, &c. aforesaid, of his great hatred, malice and ill-will towards the said A. B. unlawfully and maliciously did compose and publish, and cause and procure to be composed and published, a certain false, scandalous, malicious and defamatory libel of and concerning the said A. B., containing therein, amongst other things, the false, scandalous, malicious, defamatory and libellous words and matter following, of and concerning the said A. B. that is to say, [*here state the libellous matter with innuendoes, as directed, ante, and then proceed as follows,*] which said false, scandalous, malicious and defamatory libel, he the C. D. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, unlawfully, wickedly and maliciously did send, and cause to be sent, to one E. F. in the form of a letter addressed to the said E. F., and did thereby then and there, unlawfully, wickedly and maliciously publish, and cause to be published, the said libel, to the great damage, scandal, infamy and disgrace of the said A. B., in contempt, &c. to the evil and pernicious example, &c. and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. do further present, that the said C. D. further contriving and intending as aforesaid, on the said, &c. with force and arms, at, &c. aforesaid, of his great hatred, malice and ill will towards the said A. B., unlawfully, wickedly and maliciously did publish, and cause to be published, a certain other false, scandalous, malicious and defamatory libel, of and concerning the said A. B., containing therein, amongst other things, the following false,\* scandalous, malicious, defamatory and libellous matter, of and concerning the said A. B. that is to say, &c. [*here state the libel, with innuendoes as in first count, and then conclude, "to the damage," &c. as in first count.*]

Common form of indictment for a libel on a private individual (w)

Second count for publishing only.

[\*889]

(w) See general note ante 866 to 877.

For writing and sending a letter to the prosecutor accusing him of theft. (x)

That G. D. late of, &c. being a person of an envious, evil and wicked mind, and of a most malicious disposition, and wickedly, maliciously and unlawfully minding, contriving and intending, as much as in him lay, to injure, oppress and aggrieve, and vilify the good name, fame, credit and reputation of one J. T. a good, peaceable and worthy subject of our said lord the king, and to bring him into great contempt, hatred, infamy and disgrace, on, &c. with force and arms, at, &c. aforesaid, a certain false, scandalous and libellous writing against the said J. T. falsely, maliciously and scandalously, did frame and make and in the name of him the said G. D. then and there, did cause to be written and published in the form of a letter, directed to him the said J. T., which said writing is as follows, to wit, to J. T. "there, scoundrel, (meaning the said J. T.) it may not be amiss to acquaint you, (meaning him the said J. T.) as the time draws near, you (meaning the said J. T.) may be preparing yourself (again meaning the said J. T.) for a trial, for stealing the turkies out of my (meaning his, the said G. D.'s) yard, where I (meaning the said G. D.) hope to see you (meaning the said J. T.) sing a neck psalm, and perish according to law, you hell-hound," (meaning the said J. T.) subscribed G. D. (meaning himself the said G. D.) with intention to scandalize the said J. T. and to bring him into contempt, hatred, infamy and disgrace, the said false, malicious, scandalous and libellous writing, so as aforesaid framed, written and made, afterwards, to wit, on the said, &c. and on divers other days and times, as well before as afterwards, at, &c. aforesaid, to one A. B. and to one C. D. and to divers liege subjects of our said lord the king then and there present, falsely, maliciously and scandalously, did openly deliver and cause to be delivered, to the great scandal, infamy and damage of the said J. T. to the evil example, &c. and against the peace, &c.

[\*890]

For writing ludicrous verses accusing the prosecutrix of tyranny, profaneness and impiety, and sending the same to her in the form of a letter.

(y)

Surry. That J. F. late of, &c. wickedly maliciously and unlawfully, minding, contriving and intending as much as in him lay, to injure, scandalize and vilify the good name, fame and credit and reputation of M. B. widow, a good, peaceable and worthy subject of our said lord the king, and to bring her into great hatred, contempt, ridicule and disgrace, on, &c. with force and arms, at O. aforesaid,\* in the county aforesaid, wickedly, maliciously and unlawfully did write, and cause to be written, a certain scandalous, malicious and defamatory libel, of and concerning the said M. B. which said false, scandalous malicious, and defamatory libel is accord-

(x) See a similar precedent, Cro. C. C. 256. and general note ante 866 to 877.

(y) See similar precedent, Cro. C. C. 256.

ing to the tenor following, to wit, "The penitent tyrant believe and tremble now C—n, (meaning the town of C., in the said county of S.) dry up every tear; No more does tyranny appear, 'Tis chang'd to penitence severe: Lament no more, to thee is giv'n The succ'ring hand of pitying heaven. Tyrannus, (meaning the said M. B.) quite worn out with swearing, Law-suits and scandal, and despairing, With all the blackest sins of sinning, That H—l e'er found since the beginning, In C—n (meaning the town of C. aforesaid) takes up her (meaning the said M. B.'s abode, To seek her (meaning the said M. B.'s) long offended G—d: She (meaning the said M. B.) in imploring sorrow lies, Repentance streaming from her (meaning the said M. B.'s) eyes, Calling forgiveness from the skies. Oh C—n! (meaning the town of C. aforesaid,) think thyself divine, No righteousness compared to thine: Since no one place we now may see Can wash out sin as well as thee." Which said scandalous, malicious and defamatory libel, he the said J. F. afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, wickedly, maliciously and unlawfully did send and cause to be sent, to the said M. B. in the form of a letter directed to the said M. B. by the name of Mrs. M. B., at C., to the great damage, disgrace, scandal and infamy of the said M. B., to the evil and pernicious example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said J. F. wickedly, maliciously and unlawfully, minding, contriving and intending to injure, oppress, aggrieve and vilify the good name, fame, credit and reputation of the said M. B. and to bring her into great contempt, ridicule and disgrace, afterwards, to wit, on the same day and year aforesaid, with force and arms, at, &c. aforesaid, of his great hatred, malice and ill will towards the said M. B., wickedly, maliciously and unlawfully, did write and publish, and cause to be written and published, a certain scandalous, malicious and defamatory libel, of and concerning the said M. B. which said last mentioned scandalous, malicious and defamatory libel, is according to the tenor following, to wit, The Penitent Tyrant, &c. [*here set out the libel as before*] to the great damage, &c. [*as before.*]

Second  
count for  
writing  
and pub-  
lishing,

[Commencement of indictment as ante 2 vol. 1, 2, 3.] That one B. G. and one A. G., long before, and at the respective times of the writing, printing and publishing of the several libels hereinafter next mentioned, were and still are brothers, and persons residing and carrying on commerce within this kingdom in copartnership, to wit, at &c. and that Holland, in parts beyond the seas, long before and\* at the respective times of the writing, printing and publishing of the four several libels, next hereinafter mentioned, was in the possession and

[\*891]

Indict-  
ment for  
publishing  
a libel of  
the prose-  
cutors,  
charging  
them with  
having ex-  
ported  
gold to

Holland whilst under the government of the French, and discounting foreign bills for that purpose. (z)

under the government of certain enemies of our said lord the king, then at war with our said lord the king, to wit, at, &c. aforesaid. That the jurors, &c. that C. D. late of, &c. contriving, and unlawfully and wickedly intending to hurt, injure and prejudice the said B. G. and A. G., and to deprive them of their good name, fame, credit and reputation, and to bring them into great scandal, disgrace, infamy and contempt, and to cause it to be suspected and believed, that they the said B. G. and A. G. had discounted divers foreign bills of exchange, for the purpose of unlawfully sending and exporting, and had unlawfully sent and exported divers guineas, part of the gold coin of this kingdom, from this kingdom to Holland aforesaid, whilst the same was in such possession, and under such government as aforesaid, to and for the use of certain enemies of our said lord the king, then at war with our said lord the king, heretofore, to wit, on, &c. at, &c. aforesaid, with force arms, did unlawfully, wickedly and maliciously write and publish and cause and procure to be written and published, a certain false, wicked, scandalous and malicious libel, in the form of a letter, addressed to one F. B. containing divers false, scandalous and malicious matters, and things of and concerning the said B. G. and A. G., according to the tenor and effect following, that is to say, "since I (meaning himself the said defendant,) wrote the enclosed, I (meaning himself the said defendant,) have heard from the authority of a very eminent exchange broker, who came in by accident whilst I (meaning himself the said defendant,) was at dinn. (meaning dinner,) that a discovery had been lately made of a very serious and important nature, namely, that the great house of Goldsmith's (meaning Goldsmid's, and thereby meaning the said B. G. and A. G.) have discounted foreign bills (meaning bills of exchange,) to an amazing amt. (meaning amount,) for the illegal purpose of sending English guineas to Holland (meaning Holland aforesaid,) where they bear a premium of four shillings each; the quantity (meaning quantity,) it seems was so immense as to give suspicion, and one of the firm (meaning one of them the said B. G. and A. G.) has been examined before the privy council; he was threatened (meaning threatened) with committal, but nothing could be extorted from him; and so he told them they might dispose of his person as they pleased, but should never force him to say a word contrary to the regular rules of interrogation; upon which he was dismissed for the present. The consequence of this discovery is extremely fatal to the circulation of specie, as the first paper\* in London is refused at the bank. What

[\*892]

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(z) See a similar precedent 6 ante 866 to 877. Wentw. 449. and see general note



makes this transaction the more iniquitous is, that G——'s (meaning Goldsmid's, and thereby meaning the said B. G. and A. G.) are under the highest obligations to government, as sharers in every money transaction. A most striking article may be made from this account, which in my present state of mind, I (meaning himself the said defendant,) am totally incompetent; but you must by no means mention names; perhaps the best method of stating the fact will be by saying a certain auriferous fraternity, for they (meaning the said B. G. and A. G.) are brothers, &c. and you (meaning the said F. B.) may give the thing as much weight as possible; for it is not only important, but an absolute fact (meaning thereby that the said matter which the said defendant had so as aforesaid stated in the former part of the said libel that he had heard was true, and that the said B. G. and A. G. had discounted divers foreign bills of exchange, for the purpose aforesaid,) I (meaning himself the said defendant,) used every judicious means of finding out whether any thing appeared in any of the papers, but was afraid of being too nice upon the point; from what I (meaning himself the said defendant,) could collect, nothing has been made public. The exportation of gold (meaning gold) coin is prohibited by act of parliament (meaning parliament) under heavy penalties; but the exportation of it to an enemy is a species of high treason: the said defendant then and there meaning and intending by the said several matters so by him written and published as aforesaid, to insinuate and be understood, that the said B. G. and A. G. had discounted divers foreign bills of exchange for the purpose of unlawfully sending and exporting, and had unlawfully sent and exported divers guineas of the gold coin of this kingdom, from this kingdom to Holland aforesaid, to and for the use of certain enemies of our said lord the king, then being at war with our said lord the king, to the great damage, scandal and disgrace of the said B. G. and A. G., to the evil example, &c. and against the peace, &c. That the defendant further wickedly, unlawfully and maliciously, minding contriving and intending, as aforesaid, afterwards to wit, on the tenth day of January, in the thirty-sixth year aforesaid, at London, don, &c. did unlawfully, &c. print and publish, and cause to be printed and published, a certain other false, wicked, scandalous and malicious libel, containing divers other false, scandalous and malicious matters and things of and concerning the said B. G. and A. G., according to the tenor and effect following, that is to say, a matter of much serious import has recently occurred in this city: a certain auriferous fraternity (meaning the said B. G. and A. G.) have been discovered to have discounted foreign bills (meaning bills of exchange,) to an amazing amount, for the illegal purpose of sending English

Second  
count.

- [\*893] guineas to\* Holland, (meaning Holland aforesaid,) where they bear a premium of four shilling each ; the quantity, it appears, was so immense as to give suspicion, and one of the firm (meaning of them the said B. G. and A. G.) has been examined before the privy council. He was threatened with committal, but nothing could be extorted from him ; they might he said, dispose of his person as they pleased, but should never force him to say a word beyond the necessary replies to regular interrogation ; upon which he was for the present dismissed. The consequence of this discovery is extremely fatal to the circulation of specie ; and to it, in a great degree, is to be computed the recent refusals of the bank to discount bills on the first houses in the metropolis. The exportation of gold coin is prohibited by an act of parliament, under heavy penalties ; but the exportation of it to an enemy is a species of high treason. And what makes the transaction alluded to the more iniquitous is, that this fraternal firm, (again meaning the said B. G. and A. G.) is under the highest obligation to government, by whom it was admitted to a participation in every money advantage ; the said defendant then and there meaning and intending by the said several matters so by him printed and published, and caused to be printed and published, as last aforesaid, to insinuate and be understood, that the said B. G. and A. G. had discounted divers foreign bills of exchange for the purpose of unlawfully sending and exporting, and had unlawfully sent and exported divers guineas of the gold coin of this kingdom, from this kingdom to Holland aforesaid, to and for the use of certain enemies of our said lord the king, then being at war with our said lord the king, to the great damage, &c. That the said defendant further contriving, and unlawfully and wickedly intending to hurt, injure and prejudice the said B. and A. and to deprive them of their good name, fame, credit and reputation, and to bring them into great scandal, disgrace, and infamy and contempt, and to cause it to be suspected and believed that they the said B. and A. had been guilty of high treason, heretofore, to wit, on the said, &c. at, &c. aforesaid, with force and arms, did unlawfully, wickedly and maliciously, write and publish, and cause to be written and published, a certain other false, wicked, scandalous and malicious libel, containing in one part thereof divers other false, scandalous and malicious matters and things of and concerning the said B. and A. according to the tenor and effect following, that is to say, [*here the letter was set out as in the first count*] (the said defendant meaning and intending by the said several matters and things, so by him written and published, as in this count mentioned, to insinuate and be understood that
- [\*834] the said B. G. and A. G. had been guilty of high\* treason,)

Third  
count.

to the great damage, &c. [*Fourth count like the third setting out the libel in the second.*] That the said defendant further contriving, and unlawfully intending to hurt, injure and prejudice, the said B. G. and A. G. in their good name, fame, credit and reputation, and to bring them into great scandal, hatred, disgrace, ridicule and contempt, heretofore, to wit, on the said, &c. at, &c. aforesaid, with force and arms, did unlawfully, wickedly and maliciously, write and publish, and cause to be written and published, a certain other false, scandalous, wicked and malicious matter and thing, of and concerning the said B. G. and A. G. according to the tenor and effect following, that is to say : [*Set out the letter in the first count.*] to the great damage, &c. [*Sixth count, like the fifth, setting out the libel in the second. Seventh and eighth counts, setting forth parts of both libels respectively.*]

That H. C. gent. a good, peaceable, and worthy subject of our said lord the king, and one of the attornies of his said majesty's court of king's bench and common pleas, at Westminster, in the county of Middlesex, had been and was before the composing, writing, and publishing of the several false, scandalous, malicious and defamatory libels hereinafter mentioned, retained, and employed by one G. N. in the way of his the said H. C.'s aforesaid, profession and business of an attorney, to write, and he the said H. C. had accordingly written a letter to one T. F. demanding payment of a certain sum of money, to wit, the sum of twenty-five pounds of lawful money of Great Britain, then due and owing from the said T. F. to the said G. N. to wit, at Westminster, in the county of Middlesex aforesaid. And the jurors, &c. do further present, that the said T. F. late of, &c. being a person of an evil, wicked and malicious mind and disposition, and unlawfully, wickedly and maliciously devising, contriving, and intending, as much as in him lay, to scandalize, vilify and defame the said H. C. and to bring him into public scandal, infamy and disgrace, and to injure, prejudice and aggrieve him the said H. C. in his aforesaid profession and business of an attorney, on, &c. with force and arms, at, &c. aforesaid, of his great hatred, malice, and ill-will, towards the said H. C. unlawfully and maliciously did compose and write a certain false, scandalous, malicious and defamatory libel, of and concerning the said H. C. in his aforesaid profession and business, and of and concerning the said demand so made by the said H. C. on the said T. F. as aforesaid, containing therein (amongst other things) the false,

Fifth  
count.

For a libel  
on an at-  
torney,  
contained  
in a letter,  
(a)

First  
count for  
compos-  
ing and  
publish-  
ing.

(a) This indictment was settled the bar. See general note, ante 866 by a very eminent pleader now at to 877.

[\*895] scandalous,\* malicious, defamatory and libellous words and matter following, of and concerning the said H. C. (that is to say) From our friendship, (meaning the friendship between the said T. F. and G. N.) I (meaning the said T. F.) must own I (again meaning the said T. F.) did not expect a demand of twenty-five pounds from a petty fogging (meaning petty fogging) rascal of an attorney, a Mr. Chester, (meaning the said H. C. and that he the said H. C. was a petty fogging rascal of an attorney) who has been in and out of prison almost all his (meaning the said H. C.'s) lifetime; I (meaning the said T. F.) cannot think you (meaning the said G. N.) ever desired him (meaning the said H. C.) to make the demand (meaning the demand of the said sum of twenty-five pounds so made by the said H. C. on the said T. F. as aforesaid.) Which said false, scandalous, malicious and defamatory libel, he the said T. F. afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, unlawfully, wickedly and maliciously, did send, and cause to be sent to the said G. N. in the form of a letter, addressed to the said G. N. and did thereby then and there unlawfully, wickedly and maliciously publish, and cause to be published, the said libel, to the great damage, scandal, infamy and disgrace of the said H. C. in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said T. E. further contriving and intending, as aforesaid, on the said, &c. with force and arms, at, &c. aforesaid, of his great hatred, malice and ill-will, towards the said H. C. unlawfully, wickedly and maliciously, did publish, and cause to be published, a certain other false, scandalous, malicious and defamatory libel, in the form of a letter, of and concerning the said H. C. in his aforesaid profession and business, and of and concerning the said demand so made by the said H. C. on the said T. F. as aforesaid, addressed to the said G. N. and containing therein (amongst other things) the false, scandalous, malicious, defamatory and libellous, words and matter following of and concerning the said H. C. (that is to say) [*Here set out the libel, and conclude as before.*]

Second  
count for  
publishing  
only.

For a libel on an attorney in the form of an address to the judge, charging him with suppressing evidence on That C. C. of, &c. long before and at the time of the publishing the several false, scandalous, malicious and defamatory libels hereafter mentioned, and from thence until the day of taking this inquisition was, and still is, one of the attornies of the court of our lord the king of the bench at Westminster, in the county of Middlesex, and steward of the courts of the manor of W. in the county of E. within which said manor there now are and from time whereof the memory of man is not to the contrary, there have been divers customa-

ry tenements holden of the said manor, and demised\* and demisable by copy of the court rolls of the said manor, by the lord of the said manor for the time being, or by his steward or deputy steward of the court of the said manor for the time being, to any person or persons willing to take the same in fee simple or otherwise, at the will of the lord, according to the custom of the said manor. And the jurors, &c. do further present, that at the assizes holden at Clemsford, in and for the said county of Essex, on Wednesday the tenth day of July, in the thirty-third year of the reign of, before the honourable sir H. G. knight, one of the justices of our said lord the king of his court of common pleas, and sir F. B. baronet, one of his majesty's justices of the said lord the king, assigned to take the assizes within and for the said county of Essex, a certain issue before then duly joined in a certain action of trespass and ejectment before then brought in the said court of our said lord the king, before the king himself, for the recovery of the possession of a certain cottage with the appurtenances situate within, and part and parcel of the said manor of W. in the said county of E. in the possession of one W. S. and contiguous and next adjoining to a certain other cottage also situate within, and part and parcel of the said manor in the possession of one J. L. and which said several cottages were formerly one undivided cottage in the possession and occupation of one F. B. and in which said action one J. D. on the said action one J. D. on the demise of S. P. late of, &c. yeoman, was nominal plaintiff, and the said W. S. was defendant, in due form of law came on to be tried, and was then and there tried by a certain jury of the country in that behalf, then and there duly sworn and taken between the parties aforesaid. And the said now jurors, &c. do further present, that the said C. C. as such steward of the cottages of the said manor of W. as aforesaid, before and at the time of writing and publishing the several, false, scandalous, malicious and defamatory libels hereafter mentioned, had the care and custody of the rolls of the said manor: and that at the said trial of the aforesaid issue, the said C. C. appeared and was sworn and examined as a witness in the said cause; and that in the course of the evidence given by him the said C. C. as such witness as aforesaid at the said trial, he the said C. C. so being such steward as aforesaid, and so having the care and custody of the court rolls of the manor aforesaid, did produce and read in evidence certain of the said court rolls of the said manor, as well touching and concerning the aforesaid cottages so formerly being one undivided

a trial, and not producing the rolls of the court of which he was steward, after notice to produce them. (a)  
[\*896]

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(a) This precedent is abridged note ante 866 to 877.  
from 4 Wentw. 206. See general

[\*897]

cottage as aforesaid, as touching and concerning a certain\* croft of land called Saffron Garden, also situate within and part and parcel of the said manor of W. and a customary tenement thereof. And the said now jurors, upon their oath aforesaid, do further present, that amongst the said court rolls so produced and read in evidence by the said C. C. as such witness as aforesaid, at and upon the said trial, he the said C. C. did produce and read in evidence a certain grant which had been and was before then made by the then lord of the said manor unto the said S. P. of the said croft of land called Saffron Garden, together with the admission of him the said S. P. thereto as tenant thereof, upon a certain surrender before then made thereof by one W. W. since deceased, and H. his wife, and also a certain admission of one W. late of &c. son of said W. W. deceased, as tenant of said several cottages hereinbefore mentioned, (so formerly being one undivided cottage as aforesaid) as, and by, and under the description of one cottage, distinct and separate from the said croft of land called Saffron Garden, and that at and upon the said trial, it became and was a material question whether the said cottages so formerly being one undivided cottage as aforesaid, and for one of which cottages the said ejectment was so brought as aforesaid, were parcel of the premises granted unto him the said S. P. in and by the said grant so to him made upon the said surrender of the said W. W. deceased, and H. his wife, as aforesaid. And the said now jurors, &c. do further present, that the said S. P. being a person of a wicked, malicious and evil mind and disposition, and wickedly, and maliciously, designing, and intending (as much as in him lay) to defame, asperse, and vilify the character of the said C. C. upon the seventeenth day of July, in the thirty-third year aforesaid, with force and arms, at, &c. unlawfully, and maliciously, and wickedly, did publish, and cause and procure to be published, a certain false, scandalous, malicious and defamatory libel, of and concerning him the said C. C. as such steward of the court of the said manor of W. as aforesaid, and of and concerning the evidence given by him the said C. C. as such witness as aforesaid, at and upon the aforesaid trial; which said false, scandalous, malicious, and defamatory libel, purported to be, and was, and is, in the form of an address to the said F. B. baronet, so as aforesaid, being one of the justices assigned to hold pleas in the said court of our said lord the king, before the king himself, and also being one of the justices before whom the said assizes at which the said trial was so had, as aforesaid, were so holden as aforesaid and (amongst other things) contained therein certain false, scandalous, malicious and defamatory matters, of and concerning the said C. C. as such



steward of the said courts of the said manor of W. as aforesaid, and of and concerning the evidence by him given as such witness as aforesaid, at and upon the aforesaid trial, according to the tenor following,\* that is to say: "My lord, &c. [*Here the libel was set out, containing the charges against C. C. of suppressing court rolls, falsifying them, &c. with intent to make it believed that the cottage in question and Saffron Garden were two distinct things, when he knew them to form one entire estate, and that they were not parcel of the premises granted the said S. P.*] to the great damage, scandal, disgrace and infamy of the said C. C. to the evil example, &c. and against the peace, &c. [*Second count for printing and publishing in the Chelmsford Chronicle a libel to the like effect—Third count, writing and publishing—Fourth count, that C. C. was an improper person to be entrusted with the rolls of the manor—Fifth count, for publishing another libel in the Chelmsford Chronicle, imputing fraud and corruption—Sixth count, as an attorney at law—Seventh count, another letter to the judge.*]

[*Commencement of information as ante 7.*] That R. D. late of, &c. being a person of a most wicked and malicious temper and disposition, and unlawfully and unjustly, wickedly and maliciously devising, designing, contriving and intending to defame, asperse, scandalize and vilify the character of T. C. &c. being now and at the time of writing, printing and publishing the false, scandalous and defamatory libel hereinafter mentioned, three of the justices of our said present sovereign lord the king, assigned, &c. and who usually acted and still do act as such justices of the peace of our said present sovereign lord the king, within the division of the said county of G. within the said parish of, &c. and also unlawfully, unjustly, maliciously and wickedly designing, devising, contriving and intending to defame, asperse, scandalize and vilify the characters of J. D. churchwarden of the parish of, &c. in, &c. J. S. &c. the late overseers of the poor of the said parish, and also A. W. &c. now and at the time of the writing, printing and publishing the false, scandalous and defamatory libel, hereinafter mentioned, vestry-men and inhabitants of the said parish of, &c. and most unlawfully, unjustly, wickedly and maliciously devising, contriving, designing and intending, as much as in him the said R. D. lay, to insinuate and cause it to be believed, that they the said J. C. &c. as such justices of the peace aforesaid, and that he the said J. D. as such churchwarden, &c. as aforesaid, and that they the said T. S. &c. as such overseers as aforesaid, and the said A. W. &c. as such vestry-men of the said parish as aforesaid, had been

[\*898]

Information against the defendant for publishing a libel against three justices of the peace, the churchwardens, and overseers of a parish, accusing them of having been guilty of fraud, concerning the poor rates, &c.  
(b)

(b) See a similar precedent, 4 ante 866 to 877. Wentw. 406. See general note,

[\*899] guilty of very great frauds, abuses and misdemeanors in the execution of their several and respective offices aforesaid, in relation to the rates made for the relief of the poor of the said parish of, &c. and other matters relating to the said parish, upon, &c. with force and arms, at, &c. in &c.\* did unlawfully and maliciously, wickedly and scandalously, compose, write, print and publish, and did cause and procure to be composed, written, printed and published, a certain wicked, infamous, scandalous and defamatory libel, of and concerning them the said T. C. &c. (all their names) entitled "A dialogue between a C—h W——n (meaning a church-warden of the out parish of, &c. in, &c.) and a quaker pay-master, in which many of the V—str—y's (meaning vestries) base and villainous, &c. &c. &c."—in which said scandalous and defamatory libel are contained among other things by way of feigned and supposed conversation or dialogue, divers wicked, scandalous, malicious and defamatory matters, that is to say, in one part thereof according to the tenor following, that is to say, "A dialogue between, &c. [*Here set out the title with innuendoes explaining the names, in blank.*] And in another part thereof according to the tenor following, that is to say, [*Here set out another part of the libel.*] And in another part of the same scandalous and infamous libel to the tenor following, that is to say, &c. to the great scandal, infamy and disgrace of them the said T. C. &c. in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c.

For a libel  
by a sur-  
geon a-  
gainst a  
dissenting  
preacher.  
(c)

That before the printing and publishing of the several false, malicious and defamatory libels hereinafter mentioned, to wit, on, &c. a certain meeting had been, and was had and held at the house of, on, &c. situate and being at, &c. at which meeting W. H. late of, &c. surgeon, was present, and certain false, malicious and defamatory charges were brought forward and made against J. F. then being a dissenting minister at a certain dissenting meeting-house or chapel, called Edmonton and Tottenham Chapel, and a good, moral, virtuous and pious person, imputing to him immoral, vicious and disgraceful conduct; from which charges the said J. F. was at the said meeting exonerated. And the jurors, &c. do further present, that the said W. H. on, &c. and from thence until and at the time of composing, printing and publishing the several false, malicious and defamatory libels hereinafter mentioned, was a surgeon, and before the said day, &c. aforesaid, had been employed by, and had attended the said J. F. in the way of his said profession: and the jurors, &c. do further present, that the said W. H. being an evil disposed person, and contriving and wickedly and maliciously, intending

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(c) From the MS. of a gentleman ante 866 to 877.  
at the bar. And see general note.

to injure the said J. F. in his character and reputation, and to cause it to be suspected that the said charges\* so made as aforesaid, were true, and thereby to expose, vilify and defame the said J. F. and to cause it to be suspected that he was an unfit and improper person to be minister of the said chapel, and to officiate therein; heretofore, on, &c. at, &c. did wilfully, wickedly and maliciously, compose and print, and caused to be composed and printed, of and concerning the said J. F. a certain false, malicious and defamatory libel, in the form in one part thereof of a letter, from and in the name of the said W. H. to the said J. F. and in another part thereof in the form of an affidavit, purporting to be made by him the said W. H.; that part of the said libel in the form of a letter, containing therein, amongst other things, the false, malicious, defamatory and libellous words and matter following, to wit, &c. &c. and the other part of the said libel in the form of an affidavit, containing therein, amongst other things, the false, malicious, defamatory and libellous matter following, to wit, &c. &c. which said false, malicious and defamatory libel he the said W. H. afterwards, to wit, on, &c. at, &c. unlawfully, wickedly and maliciously, did send and circulate and cause to be sent and circulated, to and amongst divers persons, being members of, and subscribers to, the said chapel; and to and amongst divers other good and worthy subjects of this realm, whose names are to the jurors aforesaid unknown; and did thereby, then and there, unlawfully, wickedly and maliciously publish and cause to be published the said libel, to the great damage, &c. in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. [*Another count for publishing only, ante 888.*]

### INDICTMENTS FOR LIBELS, &c. IN PICTURES, PRINTS, AND EFFIGIES.

That before and at the time of the publication of the scandalous and malicious libels hereinafter mentioned, one R. W. gentleman, a good, peaceable, and worthy subject of our said lord the king, was one of the attorneys of his said majesty's court of king's bench, to wit, at, &c. and that before the publishing of the several scandalous and malicious libels hereinafter mentioned, to wit, on, &c. a certain commission of bankrupt was issued against one R. J. And that afterwards and before the publication of the same libels, to wit, on, &c. a certain petition was presented by the said R. J. to the right honorable the Lord High Chancellor of Great Britain, praying, amongst other things, that the said commission might be superseded

Indictment for libel, and libellous picture.

[\*901] And\* the jurors, &c. do further present, that A. M. late of, &c. gentleman, being a person of an evil, wicked and malicious mind and disposition, and, unlawfully, wickedly and maliciously, devising, contriving and intending, as much as in him lay, to scandalize, vilify, and defame the said R. W. and to bring him into public scandal, hatred, contempt, and disgrace, and to injure, prejudice and aggrieve him the said R. W. and to insinuate and cause it to be believed that the said R. W. had been guilty, not only of the greatest injustice, cruelty and oppression, towards the said R. J. but also of the crimes of perjury and subornation of perjury heretofore, to wit, &c. at, &c. aforesaid, of his great hatred malice, and ill-will towards the said R. W. unlawfully and maliciously did write and publish, and cause to be written and published, a certain false, scandalous libel, containing therein, among other things, divers false, scandalous and malicious matters of and concerning the said R. W. and of and concerning the said commission and the said petition, according to the tenor and effect following, that is to say, [*Here follows the libel set forth at length.*] to the great scandal, infamy and disgrace of the said R. W. in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. M. so being such person as aforesaid, as well knowing the premises aforesaid, and again unlawfully, wickedly and maliciously, devising and intending as aforesaid, afterwards, to wit, on, &c. at, &c. aforesaid, unlawfully and maliciously did write and publish, and cause and procure to be written and published, a certain other false, scandalous, and defamatory libel, of and concerning the said R. W. and of and concerning the aforesaid commission, containing therein, among other things, divers false, scandalous and seditious matters and things of and concerning the said R. W. and of and concerning the said commission, according to the tenor and effect following: [*part of the libel again set out.*] to the great scandal and disgrace of the said R. W. in contempt of our said lord the king and his laws, to the evil and pernicious example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity.

Second count.

And the jurors, &c. do further present, that the said A. M. so being such a person as aforesaid, and well knowing the premises aforesaid, and again unlawfully, wickedly and maliciously devising and intending to traduce, defame and vilify the said R. W. and to bring him into great and public hatred and contempt among all the liege subjects of our said lord the king, heretofore, to wit, on, &c. at, &c. aforesaid, unlawfully, wickedly and maliciously did publish, and cause and procure to be published, a certain scandalous and libellous picture, of and concerning the said R. W. with divers figures\*

Third count.

[\*902]

and images therein, and, amongst others, certain other figures and images denoting, and representing, and intending to denote and represent the devil pursuing the said R. W. towards a gallows and towards a certain fire intended to represent hell, and the said picture being then and there intended to represent that the said R. W. had been and was guilty of misconduct and crime, deserving punishment by hanging on a gallows, and of punishment after death; and that the said A. M. the said scandalous and libellous picture, afterwards, to wit, on the same first day of July, in the forty-ninth year aforesaid, and on divers other days and times, as well before as afterwards, at the parish of St. James, Clerkenwell, aforesaid, in the said county of Middlesex, to divers liege subjects of our said lord the king, then and there present, unlawfully, wickedly and maliciously, did openly shew and exhibit, and cause to be shewn and exhibited, to the great scandal and disgrace of the said R. W. in contempt of our said lord the king and his laws, to the evil example of all others in like case offending, and against the peace of our said lord the king, his crown and dignity.

That one R. S. from his nativity until the time of the taking this inquisition, hath been a person of good name, fame and credit, and as such hath for and during all the time aforesaid, been reputed, esteemed and respected by and amongst all good and worthy liege subjects of our sovereign lord the king, to whom he was in any wise known; and that the said R. S. at the several and respective times hereinafter mentioned, was and yet is, a married man. And the jurors, &c. do further present, that the said R. S. before and at the several times hereinafter mentioned, was, and yet is, a miller; and the trade and business of a miller hath used, exercised, and followed, and still doth use, exercise and follow, in a certain place called, &c. in, &c. And the jurors, &c. do further present, that T. S. late of, &c. printer, being a malicious and seditious person, and of a wicked disposition, and most unlawfully, maliciously and unjustly, devising, designing, contriving and intending, as much as in him lay to injure the said R. S. in his aforesaid good name, fame and credit, and to bring him into public scandal, infamy, disgrace, hatred, and contempt, with and amongst all the good and worthy liege subjects of our said lord the now king, to whom he was in any wise known, and also to disturb, molest and disquiet him the said R. S. and to disturb his domestic peace and happiness, and to traduce, scandalize, and vilify him the said R. S. and also most unlawfully, maliciously and unjustly, devising, designing, contriving, and

For composing and publishing malicious and obscene verses on prosecutor and his wife, and libelling them in certain pictures or impressions, and exhibiting them near the corn market-  
(d)

(d) See similar precedent, 4 ante 866 to 877.  
Wentw. 203. See general note

[\*908] intending\* to represent, suggest, and insinuate, and to make it be credited and believed that the said R. S. was, and is, a libidinous, immoral, lewd, debauched, and ill disposed person, and wickedly, wrongfully, and unjustly, to injure the said R. S. in his trade and business aforesaid, and to impoverish and wholly ruin him the said R. S. on, &c. falsely, maliciously, unlawfully, wickedly, wilfully and designedly, did print, and did then and there falsely and maliciously cause and procure to be printed, of and concerning the said R. S. a certain false, scandalous, infamous, malicious, and obscene libel, in the form of a song, entitled, "The Miller and Laundress, a new song, founded on facts;" and containing in itself the false, scandalous, infamous, malicious, and obscene verses and matter to the tenor following, of and concerning the said R. S. (that is to say) Near Wandsworth town this famed miller (meaning the said R. S.) does dwell, &c. [*here the libel was set out with innuendoes.*] And the jurors, &c. do further present, that in order the more effectually to complete, accomplish, perfect and bring to effect the purposes aforesaid, so as aforesaid, unlawfully, maliciously, and unjustly devising, designing, contriving and intending, by the said T. S., he the said T. S. did then, to wit, on the said, &c. at, &c. aforesaid, unlawfully, maliciously, wickedly, wilfully and designedly, mark, print and impress, and unlawfully, &c. cause and procure to be marked, printed and impressed on the said false, &c. libel so printed by the said T. S. in manner aforesaid, certain scandalous, ludicrous, and obscene pictures, designs, prints and devices, representing and intended by the said T. S. to represent the said R. S. in a scandalous, ludicrous, and obscene manner. And the jurors, &c. do further present, that the said T. S. in order to effect and accomplish the purpose aforesaid, did then to wit, on the said &c. with force and arms at, &c. aforesaid, to wit, in the public street and king's common highway there, called Mark Lane, before and near unto a certain building there called and known by the name of the Corn Market, at which place he the said R. S. then was and for a long time then last past had been used and accustomed to deal and traffic in the way of his said trade and business of a miller, and whereat there were assembled and met together a great number of the liege subjects of our sovereign lord the now king, unlawfully, &c. cause and procure the said false libel, so printed by him the said T. S. in manner aforesaid, to be published and to be sung, said, spoken, uttered and pronounced with loud voices, and in a public and open manner, and to be distributed about, and delivered together with the said scandalous, &c. pictures, &c. so marked, &c. thereon, to divers of the liege subjects of our said lord the king, there then present, standing and be-



ing, to the great\* damage, scandal, infamy, disgrace and injury of the said R. S. in contempt, &c. to the evil example, &c. and against the peace, &c. [\*904]

[Commencement of information as ante 7.] That T. K. of, &c. surgeon general of his majesty's forces, before and at the time of uttering and publishing of the false, scandalous, malicious and libellous prints and matters hereinafter mentioned, was and yet is a good, true, honest, faithful, worthy and respectable subject of this kingdom, and as such always hath demeaned himself, yet H. S. J. N. late of &c. surgeon, well knowing the premises, but being a person of an evil and malicious mind and disposition, and not having the fear of God in his heart, and most unjustly contriving and wickedly and maliciously devising and intending, as much as in him lay, to injure, aggrieve, defame and vilify the good name, fame, credit, character and reputation of the said T. K. and to bring him into great contempt, ridicule, infamy and disgrace, heretofore, to wit, on, &c. at, &c. unlawfully, scandalously and maliciously uttered and published, a certain false, scandalous, malicious and libellous print and matter on paper, representing two men riding on horseback, one of which said men was represented by the said print as spitting at and on the face of the other said man, (meaning thereby to represent himself the said H. S. J. N. by the first mentioned man, as spitting in the face of the second mentioned man, and meaning to represent by the second mentioned man the said T. K. as having his face so spit at and upon by the said H. S. J. N.) and in which said print just above the first mentioned man, there was a certain inscription (meant to be an address of the said H. S. J. N. represented by the first mentioned man, to the said T. K. represented by the said second mentioned man, and relating to the said spitting,) in the words, marks and letters following, to wit, Sir, (meaning the said T. K.) I (meaning H. S. J. N.) always spit upon the dirtiest part of the street, and I (meaning the said H. S. J. N.) am well assured it (meaning the spittle of the said H. S. J. N.) has now fallen upon the foulest spot, (meaning thereby the face of the said T. K.) meaning and intending by the said address to represent and describe the face of the said T. K. as belonging to a person of a base, mean and contemptible character, and thereby to expose the said T. K. to public contempt, ridicule and disgrace; and on the said print, just above the said second mentioned man, there was a certain inscription (meant to be the address of the said T. K. represented by the second mentioned man to the said H. S. J. N. represented by the first men-

Information for a libel in a print. (e)

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(e) See a similar precedent, Hand. Prac. 247.

[\*905] tioned\* man and relating also to the spitting) in the words, marks and letters following, to wit, Sir, (meaning the said H. S. J. N.) you (meaning the said H. S. J. N.) have spit in my (meaning the said T. K.'s) face, and my (meaning the said T. K.'s) eyes smart, as if you (meaning the said H. S. J. N.) chewed tobacco (meaning and intending by the last mentioned address to represent the said T. K. as admitting that his face had been spit upon by the said H. S. J. N. and as tamely submitting to that injury;) and upon the said paper, just under that part thereof which contained the above mentioned print and matter, there was a certain other inscription in the words, figures, marks, and letters following, to wit, A surgeon general (thereby meaning the said T. K.) near Arlington-street, (meaning thereby the residence of the said T. K.) afflicted with sore eyes from tobacco spittle (thereby meaning the spittle of the said H. S. J. N.) falling in his (meaning the said T. K.'s) face, when flying through Portman-square like a kite (meaning an allusion to the said T. K.'s name) on, &c. (meaning and intending by the said last mentioned inscription to show and to have it understood, that the print and matters above mentioned were intended to apply to the said T. K.) and in the said print, just below the last mentioned inscription, there was a certain other inscription in the words, marks and letters following, to wit, In his (meaning the said T. K.'s) muddy brain, (meaning that the said T. K. had a dull, stupid and confused understanding) which (meaning the said T. K.'s brain) is as dry as the remainder of biscuit after a Guinea voyage, he (meaning the said T. K.) hath strange places crammed with crude objections, the which he (meaning the said T. K.) vents forth in mangled form; meaning and intending by the said last mentioned inscription to represent the said T. K. as a person in the habit of making ill digested and absurd objections to reasonable applications or proposals, and thereby maliciously and injuriously intending, designing and contriving to ridicule and degrade the said T. K. and to bring upon him the said T. K. the derision and contempt of his friends, neighbours and acquaintances, in contempt, &c. in open violation of the laws of this realm, to the evil and pernicious example, &c. and against the peace, &c. *[Second count for the print only. Three other counts, each on one of the writings or inscriptions.]*

[\*906] That J. A. late of, &c. J. P. late of, &c. H. R. late of, &c. and W. M. late of, &c. being respectively persons of envious, evil, and wicked minds, and of most malicious dispositions, and maliciously and\* unlawfully devising and intending to injure and aggrieve one A. B. gentleman, then and there being an officer and person engaged and employed in certain business relating to the revenue of our lord the king, to wit,

For  
drowning  
in effigy  
the collec-  
tors of  
assessed  
taxes and

an inspector of the duties on houses and windows, and all other duties under the management of the commissioners for managing his majesty's affairs of taxes by several acts granted to his majesty, and C. D. then and there being an officer and person engaged and employed in certain business relating to the revenue of our said lord the king, to wit, an officer of the survey and inspection of the several and respective rates and duties upon houses, windows and lights, and upon inhabited houses, and upon male servants, carriages, horses, mules and dogs, by certain acts of parliament granted to his majesty, for viewing and numbering the several windows and lights in each house, and for inspecting and examining the assessment or certificate thereof, made or to be made according to the directions of certain acts of parliament, and for doing all other matters by the statutes in such case made and provided, requisite to be done by an officer of that nature, in the county of G. being respectively good, peaceable, and well disposed subjects of our said lord the king, and to bring them into great contempt, hatred infamy and disgrace, on, &c. with force and arms at, &c. aforesaid, in the county aforesaid, unlawfully and maliciously did conspire, combine, confederate and agree amongst themselves, and together with divers other evil disposed persons whose names are unknown to the jurors aforesaid, to traduce, defame, vilify and bring into public hatred, ridicule and contempt, the said A. B. and C. D. as such officers respectively as aforesaid, and to make and cause to be made a great noise, riot, rout, tumult and disturbance, at T. aforesaid, in the county aforesaid, and that the said J. A., J. P., J. R. and W. M. in pursuance of and according to the said conspiracy, combination, confederacy and agreement, as aforesaid before had, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully and maliciously did put and place, and cause and procure to be put and placed, two effigies of figures intended to represent the said A. B. and C. D. in a certain cart, and then and there unlawfully and maliciously did by and with a certain horse, draw and cause to be drawn the said cart with the said effigies so put and placed thereon, and exposed to public sight and view, in, through, and along divers public streets and common highways there, and also before and near the dwelling house of the said A. B. and dwelling houses of divers liege subjects of our said lord the king there situate, and in the presence, sight and view of divers liege subjects of our said lord the king, in the manner in which criminals are

for a libel  
upon  
them. (f)

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(f) This indictment was settled now on the bench. See also general note, ante 866 to 877.  
by a very eminent crown lawyer

[\*907] usually\* conveyed to the place of execution, and did then and there during all that time toll and cause to be tolled, a certain large bell of and belonging to a certain church at, &c. aforesaid, and made and caused to be made a great noise, riot, rout, tumult and disturbance, and utter and cause to be uttered, divers malicious and opprobrious words and speeches, defaming and vilifying the said A. B. and C. D. and among other the opprobrious words and speeches, that is to say, Damn the dog taxers, (meaning the said A. B. and C. D.) Damn the window peepers, (meaning the said A. B. and C. D.) and then and there beat, and cause to be beaten the heads and faces and other parts of the said effigies and figures, and did afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, cast and throw the said effigies or figures into a certain river or stream of water, to denote and represent the death and drowning of them the said A. B. and C. D. and did then and there immediately after such casting and throwing, ring and cause to be rung divers bells in and belonging to a certain church, at, &c. aforesaid, in the manner in which the same bells were used to be rung on joyful occasions, and did also afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, compose, written and publish, and cause and procure to be composed, written and published, a certain scandalous and malicious libel, containing amongst other things therein divers scandalous and malicious matters and things, of and concerning the said A. B. and C. D. to the tenor and effect following, that is to say, Those two unfortunate malefactors (meaning the said A. B. and C. D.) were drawn to the place of execution, attended by that able priest J. W.; on their arrival, A. B. (meaning the said A. B.) stood up and with uplifted hands, addressed the spectators as following: Fellow mortals, you have now presented to your view one of the most unfortunate of men, (meaning the said A. B.) whose villainy has brought him to the most detestable of all deaths: I (meaning the said A. B.) have been the bane of social comfort to many of you, you now see the consequences of incorrigible roguery, (meaning the said A. B.) have rid many of the golden dropsy which subsists near the purse to add to any one decease which will soon terminate any existence; to what dark abyss am I hastening, to unknown regions and pain yet unfelt by me: ah! too late do I repent, the time is come, I must now answer to the call of justice, had I been just and true, half honest would have saved me; I claim forgiveness of you, though I have wronged you all, although with this my vile associate, (meaning the said C. D.) partner of my villainies, sharer of my gains, words are wanting to convince you how my conscience goads me, heaven hath now poured down curses on my head. This speech was answered by

some pretty good\* huzzas; the other miscreant (meaning the said C. D.) then stood up, and with most beastly howl thus addressed the delighted spectators: Ungrateful wretches, you now behold a man (meaning the said C. D.) in the face of death, whose courage dares to call you by your proper title; you say I am of notorious ploughshare and buckle memory; yes, I (meaning the said C. D.) am: my conduct has been such as commanded your esteem, I (meaning the said C. D.) took but twenty shillings and gave you two, but I am now foiled in my attempt to strip you of all within your shallow purses, with an eternal chaos before my eyes, I tell you we (meaning the said A. B. and C. D.) have shared fifteen hundred pounds, this I say to gripe your empty pockets; had we (meaning the said A. B. and C. D.) lived, your persons should have been in pawn to glut our empty coffers; now farewell: we shall meet anon to compliment each other on our rogueries, I (meaning the said C. D.) bid you all farewell. This hardened villain (meaning the said C. D.) was answered by much hissing and clapping of hands, they (meaning the said A. B. and C. D.) were then drowned, drawn, quartered and dissected; the joyful ceremony was finished by bell ringing, and the sudden transition of every one's countenance from that of melancholy to a joyful aspect; J. W. the priest endeavoured to convert them by numerous hard blows and sundry bruises. Long live the king:"—to the great damage, infamy and disgrace of the said A. B. and C. D. to the evil example, &c. and against the peace, &c. [*In the second count one of the effigies said to represent A. B. The third omits the libel. The fourth resembles the third, and avers the number of the unknown men to have been 100 and more, stating their illegal assembly and tumultuous behaviour in the streets without mentioning the circumstances respecting the figures, &c. as in the former counts.*]

That T. E. late of H. in the county of M. nurseryman and seedsman, being a person of a wicked, uncharitable and malicious mind and disposition, and unlawfully, wickedly and maliciously devising, contriving, and intending, as much as in him lay, to injure, oppress, aggrieve and vilify the good name, fame, credit and reputation, of C. J. C. clerk, and to bring him into great scandal, infamy, contempt, ridicule and disgrace, on, &c. at, &c. aforesaid, did unlawfully, wickedly and maliciously make, and cause to be made, a certain gibbet or gallows, and also a certain effigy or figure, intending to represent the said C. J. C. and afterwards, to wit, on the same day and year aforesaid, at H. aforesaid, in the county aforesaid, unlawfully, wickedly and maliciously erected, set up and

Information for a libel, by hanging the prosecutor in effigy. (g)

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(g) See a similar precedent, Hand. Prac. 225.

**[\*909]** fixed,\* and caused and procured to be set up, erected and fixed, the said gibbet or gallows in and upon a certain piece of ground near to a certain common king's highway there, commonly called the great North Road, passing through H. common in H. aforesaid, in the county aforesaid, and kept and continued, and caused and procured to be kept and continued, the said gibbet or gallows so there erected, set up and fixed as aforesaid, for a long space of time, to wit, for the space of eight days then next following, and during that time, to wit, on the day and year aforesaid, and on every day between that day and the second day of April then next following, at H. aforesaid, in the county aforesaid, unlawfully and wickedly, and maliciously hung up and suspended, and caused and procured to be hung up and suspended, the said effigy or figure so intended to represent the said C. J. C. to and upon the said gibbet or gallows, and kept and continued, and caused and procured to be kept and continued, the said effigy or figure intending to represent the said C. J. C. as aforesaid, so hung up and suspended as aforesaid, for a long space of time, to wit, for the space of twelve hours on each of those respective days, and during those times on those respective days, there unlawfully, wickedly and maliciously published and exposed the said gallows or gibbet, with the said effigy or figure, so intended to represent the said C. J. C. as aforesaid, thereto suspended, to the sight and view of divers and very many of the liege subjects of our said lord the king, passing and repassing in and along the common king's highway aforesaid, to the great scandal, infamy, ridicule and disgrace of the said C. J. C. in contempt of our said lord the king and his laws, to the evil example of all others in the like case offending, and against the peace, &c.

For erecting a gallows and hanging on it an effigy of a waterman, near to the place where he was accustomed to ply. (h)

That T. W. late of, &c. J. H. late of, &c. and J. S. late of, &c. being persons of envious, uncharitable, wicked and malicious minds and dispositions, and unlawfully, wickedly and maliciously devising, contriving and intending, as much as in them lay, to injure, oppress, aggrieve and vilify the good name, fame, credit and reputation of W. M. a good, peaceable, and well disposed subject of our said lord the king, and to bring him into great scandal, infamy, contempt, ridicule and disgrace, on, &c. at, &c. aforesaid, did unlawfully, wickedly and maliciously make, and cause to be made, a certain gibbet or gallows, and also a certain effigy or figure intending to represent the said W. M. and afterwards, to wit, on the same day and year aforesaid, unlawfully, wickedly and maliciously erected, set up, and fixed, and caused and procured to be erected,\* set up, and fixed, the said gallows or

**[\*910]**

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(h) See a similar precedent, 4 Wentw. 205.



gibbet in a certain yard or place, near to or in part overhanging the foot pavement of a certain common or public highway, in, &c. aforesaid, called — street, near to a certain ferry called the horse-ferry, where the said W. M. was used and accustomed to ply in the way of his trade and business of a waterman, and kept and continued, and caused and procured to be kept and continued, the said gibbet or gallows, so there erected, set up, and fixed as aforesaid, for a long space of time, to wit, the space of four days then next following, and during that time to wit, on the day and year aforesaid, and on divers other days and times between that day and, &c. then next following, at the parish aforesaid, in the county aforesaid, unlawfully, wickedly and maliciously hung up and suspended, and caused and procured to be hung up and suspended, the said effigy or figure to and upon the said gibbet or gallows, with the surname of the said W. M. inscribed on a piece of wood fixed to the said effigy or figure, and with divers other scandalous inscriptions and devices upon and about the same, adding to and reflecting on the said W. M. and kept and continued, and caused and procured to be kept and continued, the said effigy or figure so hung up and suspended as aforesaid, for divers long spaces of time, to wit, for the space of eighteen hours in each and every of the days aforesaid, and during those respective times unlawfully, wickedly and maliciously, published and exposed the said gallows or gibbet with the said effigy or figure thereon, to the sight and view of divers and very many of the liege subjects of our said lord the now king, passing and repassing in and along the king's highway aforesaid, to the great damage, scandal, infamy, contempt, ridicule and disgrace of the said W. M. in contempt, &c. to the evil and pernicious example of all others in the like case offending, and against the peace, &c.

That A. B. late of &c. [*and other defendants,*] being respectively persons of uncharitable, wicked, malicious minds and dispositions, and unlawfully, wickedly and maliciously devising, contriving and intending as much as in them lay, to injure, aggrieve and vilify the good name, fame, credit and reputation of D. C. and E. G. gentlemen, being respectively, good, peaceable and well disposed subjects of our said lord the king, and to bring them into great scandal, infamy, contempt, ridicule and disgrace, on, &c. at, &c. aforesaid, did unlawfully, wickedly and maliciously erect, set up, and fix, and cause and procure to be erected, set up and fixed, a certain gallows or gibbet in a certain field near to the dwelling of the said D. C. there, and then and there unlawfully, wickedly and maliciously, hung up and suspended, and caused and procured to be hung up and suspended, to and upon the said gallows or gibbet,

For fixing a gallows and hanging thereon an effigy of two persons, and there leaving them hanging for some time, and taking them down and burning them in the pre-

presence of  
divers  
people.  
[\*911]

divers,\*to wit, two effigies or figures, that is to say, one effigy or figure intended to represent the said D. C. another effigy or figure intended to represent the said E. G. and then and there unlawfully, wickedly and maliciously, kept and continued, and caused and procured to be kept and continued, the said effigies or figures so hung up and suspended as aforesaid, for a long space of time, to wit, for the space of half an hour, and during that time there, unlawfully, wickedly and maliciously published and exposed, and caused and procured to be published and exposed, the said gallows or gibbet, with the said effigies or figures thereon, in the presence and view of divers and very many persons then and there assembled and met together, and afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, unlawfully, wickedly and maliciously took down the said effigies or figures from the said gallows or gibbet, and carried and conveyed the same to a certain other place in, &c. aforesaid, and there unlawfully, wickedly and maliciously, in the presence and view of divers and very many persons then and there assembled and met together, burnt and consumed the said effigies or figures, and caused and procured the same to be burnt and consumed by fire, to the great scandal, infamy, contempt, ridicule and disgrace of the said D. C. and E. G. in contempt of our said lord the king and his laws, to the evil and pernicious example, &c. and against the peace, &c. [*Second count for the effigy of D. C. Third count for the effigy of E. G.*]

For publishing an  
ex parte  
statement  
of preliminary  
examinations  
before a  
magistrate  
previous  
to his committing  
a person for  
an offence  
with  
which he  
is charged. (i)

That before the printing and publishing of the scandalous, defamatory and malicious libel therein afterwards mentioned, to wit, on, &c. one M. P. preferred to and before the right honourable Thomas Smith, then and still continuing to be mayor of the city of London, and one of the keepers of the peace and justices of our said lord the king, assigned to keep the peace, and also to hear and determine divers felonies, trespasses and misdemeanours, committed within the city of London, a certain charge against the said R. S. that is to say, a charge that the said R. S. had, on the high seas, within the jurisdiction of the admiralty of England, on board a certain ship, unlawfully made an assault upon her the said M. P. with intent her the said M. P. feloniously and against her will, to ravish and carnally to know; to wit, at, &c. and that the defendants well knowing the premises, but being malicious and ill disposed persons, and devising and intending to traduce, defame and aggrieve the said R. S. and to injure and prejudice him in the minds of the liege subjects of our lord the king, and to cause it to be believed that he was guilty of the

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(i) See 2 Camp. Rep. 563. where this was held libellous.

said assault, and thereby to prevent the due\* administration of justice, and to deprive the said R. S. of the benefit of an impartial trial for and concerning the matter of the said charge, did on, &c. at, &c. wilfully and maliciously print and publish, and cause and procure to be printed and published, a certain scandalous, malicious and defamatory libel, of and concerning the said charge and the matter thereof, which said scandalous and malicious libel was and is according to the tenor and effect following, that is to say, "Police,—Mansion-house. The captain for whose apprehension a warrant has been issued, as we stated in our yesterday's paper, was apprehended on Wednesday afternoon by two of the city officers at the house of his attorney, and underwent a private examination before the lord mayor, yesterday morning. His name is S. and the charge preferred against him was for assaulting Mrs. P. the wife of Mr. P. who, we understand, is attached to the commissariat department in the island of Barbadoes, with intent to commit a rape on board his own ship, the Mentor, on her passage to England. The circumstances of this case, so disgraceful to captain S. are, we understand, as follow: Mrs. P. embarked at the isle of Barbadoes, on board the Rachael, captain C. being one of the last of the West India convoy, amongst which was also the Mentor, commanded by captain S. with intent to join her husband in London. In the course of the voyage a dead calm stopped the progress of the fleet, and mutual visits were made from the different ships; amongst others the passengers and officers of the Rachael were invited to partake of a repast on board the Mentor, and Mrs P. accompanied by captain C. and some other persons, accordingly proceeded in the ship's boat to the vessel, where they were hospitably received and luxuriously entertained by captain S. who was peculiarly marked in his attentions to Mrs. P. during the day. While the party were enjoying the pleasures of the feast, however, a brisk gale sprung up, and the surface of the ocean, which had previously been undisturbed by the slightest zephyr, became now agitated with considerable fury, to the no small alarm of Mrs. P. who became exceedingly desirous to return to her own ship. From this step, however, she was deterred by the roughness of the sea. In this dilemma, captain S. with much apparent politeness, begged that she would not make herself uneasy, observing if she was not afraid to remain under his protection, he would give her such accommodation, and endeavour to consult her comfort and happiness in such a manner as to leave her no ground to lament her temporary absence from the Rachael. After some persuasion, Mrs P. agreed to accept the offer, as from the increasing strength of the winds she saw there were no hopes of

[\*912]

[\*913] her being able to get back that night without being exposed to hardships\* extremely unpleasant for a female to encounter. Captain C. and his male friends, therefore, quitted the ship, leaving Mrs. P. behind them, and returned to the Rachael. The state cabin was then prepared by captain S.'s directions for his fair visitor, to which she soon after retired, but had not been there long, when the obtrusion of the captain upon her privacy, excited no little astonishment, which from his subsequent conduct, encreased to the utmost alarm. He commenced his attack by apologizing for his entrance, and by ascribing his unexpected visit to the impression which the charms of Mrs. P. had made upon his too susceptible heart. He proceeded in the same strain of fulsome flattery for some time, but finding that his eloquence had no other effect than to raise the indignation of his innocent visitor, he proceeded from words to deeds, and having, in the first instance, imprinted some impassionate kisses, he took some other liberties with the person of Mrs. P. which delicacy forbids our describing, but which so far irritated and terrified Mrs. P. that she shrieked with the utmost violence. Her cries at length attracted the attention of a gentleman named A. who was a passenger in the vessel, and who instantly rushed to the spot, in time to prevent the perpetration of the vile and dishonourable intentions of the captain, from whose loathsome embraces he extricated his almost senseless victim. The ensuing morning Mrs. P. returned to the Rachael, and on her arrival in this country instantly informed her husband of the atrocious manner in which she had been treated, and immediate application was made for a warrant, in consequence of which, the criminal is likely to meet the legal punishment of his villainy. The result of the examination yesterday was, that the captain was himself held to bail in 1,000*l.* with two sureties in 500*l.* each, to answer for his appearance at the Admiralty sessions, or court of King's Bench, as the parties may think fit, to take his trial for the offence. Mrs. P. is a woman of an interesting and intelligent countenance, about twenty-five years of age. The captain had nothing either captivating or prepossessing in his appearance, and is about thirty. He did not seem the least affected at his disgraceful situation, nor to feel in the slightest degree, the very contemptuous manner in which he was regarded by all who were aware of his unmanly conduct. He employed a short hand writer, a barrister, and a phalanx of friends; if possible, to intimidate his accuser by the publicity of her exposure. Notwithstanding these attempts, however, to screen himself behind her delicacy, she gave her evidence in the clearest and most collected manner, which conscious innocence and innate virtue could only have enabled her to accomplish. This.

was the only examination which occurred at this office worth detailing."\*—to the great damage, &c. to the evil example, [#914] &c. and against the peace, &c.

## INDICTMENTS, &c. FOR LIBELS ON DEAD PERSONS.

That A. B. late of, &c. being a person of a wicked and malicious disposition, and wickedly and maliciously contriving and intending, to injure, defame, and disgrace and vilify the memory, reputation and character of G. N. C. earl C. then deceased, *and to bring the family and descendants of the said G. N. C. earl C. into great scandal, infamy and contempt,* and to cause it to be believed that the said earl in his lifetime, was a person of a vicious and depraved mind and disposition, and destitute of filial duty and affection, and of all honourable and virtuous sentiments and inclinations; and that the said earl had led a wicked and profligate course of life, and had addicted himself to the practice and use of the most criminal and unmanly vices and debaucheries, on, &c. at, &c. with force and arms, wickedly, maliciously and unlawfully did print and publish, and cause to be printed and published, in a certain newspaper called "The World," a certain false, and scandalous, and malicious libel, of and concerning the said earl C. [*here set forth the libel with innendoes,*] to the great disgrace and scandal of the memory, reputation and character, of the said G. earl C.; in contempt, &c. to the evil example, &c. and against the peace, &c.

For a libel on a person who was dead. (k)

## INDICTMENTS, &c. FOR VERBAL SLANDER.

[Cumberland. Commencement of information as ante 6.] That M. J. late of, &c. spinster, being a wicked and ill disposed

For insulting and vilifying the commissioners of the property tax in the execution of their duty. (l)

(k) The words in italics were not inserted in the original indictment, and it was holden bad on the ground that without some averment of intent to vilify the family, or excite ill-blood, no indictable offence was charged on the defendant. See 4 T. R. 126.

(l) This indictment was settled by a very eminent crown lawyer now on the bench. See also ante 2 vol. 214. Mere words of a pri-

vate individual are not, [in general, indictable, though, if reduced into writing, they would be libellous. 3 Salk. 190. But scandalous aspersions of a magistrate in the execution of his office, are regarded as criminal, and subject the offender to punishment, at the discretion of the court in which he is convicted. Comb. 46. And, to these, the rule is strictly confined. For if the language, however opprobrious, apply

- [\*915] person,\* and wickedly intending to vilify, scandalize, and bring into disgrace the characters of one J. L. one R. W. and one W. H. M. they the said J. R. and W. H. being at the time of the committing the offence hereinafter mentioned, commissioners duly appointed under and by virtue of an act of parliament, passed in the thirty-ninth year of the reign of his present majesty, intituled, An act to repeal the duties imposed by an act made in the last session of parliament for granting an aid and contribution for the prosecution of the war, and to make more effectual provision for the like purpose by granting certain duties upon income in lieu of the said duties, for hearing and determining appeals relative to the duties upon income, and by virtue of such appointment acting as such commissioners, in the hearing and determining appeals arising in the respective wards of Cumberland, Eskdale and Leath, in the said county of Cumberland, and wickedly and maliciously intending to vilify the proceedings of the said commissioners in hearing and determining appeals as aforesaid, and to bring into contempt and hatred, his majesty's government, on, &c. at, &c. wickedly, wilfully, falsely and contemptuously, in the presence and hearing of the said commissioners, whilst they the said commissioners were acting in the execution of their said office, in hearing and determining appeals relating to the said duties upon income, at a certain meeting duly holden by them for that purpose, on the said, &c. at, &c. uttered and pronounced, and loudly published to the said commissioners, these false, contemptuous, malicious, scurrilous and abusive words, of and concerning the said commissioners, and of and concerning the proceedings of the said commissioners in the execution of their said office following, that is to say, You, (meaning the said J. R. and W. H. as such commissioners as aforesaid) are a blackguard perjured pack, and I (meaning the said M.) will bring you before the court of King's bench ; to the great scandal and\* infamy of the said J. R. and W. H. as such commissioners as aforesaid, in disparagement of the said proceedings of the said commissioners, in disturbance of the administration of justice, and in contempt of the government of our lord the king, and his
- [\*916]

only to the justice in his private capacity, no indictment can be supported. So that if a man at a vestry meeting call an absent magistrate abusive names in reference to a private quarrel. 2 Campb. 142. if, in his absence he say, "if he is a sworn justice he is a rogue and a foresworn rogue," or if he apply to him the

names of ass, fool, coxcomb, or blockhead, no indictable offence will have been committed. 2 Stra. 1157, 8. 2 Salk. 698. 2 Campb. 142. And it seems that to make any words thus indictable they must be spoken to the magistrate, and not in his absence. 2 Campb. 142. 2 Stra. 1157. 1 Stra. 420, 1.



laws, and against the peace, &c. And the attorney general, Second  
&c. that whilst the said J. R. and W. H. being such com- count.  
missioners for hearing and determining appeals relating to  
the duties upon income arising in the respective wards of  
Cumberland, Eskdale and Leath, as aforesaid, were acting  
in the execution of their said office, in hearing and deter-  
mining certain appeals of divers persons, relating to the du-  
ties upon income, brought before them at a certain meeting  
duly holden by them the said commissioners for that purpose,  
on the said, &c. at, &c. aforesaid, for the said M. J. being a  
wicked and ill disposed person, and a disturber of the peace  
of our lord the king, and wickedly intending to bring into  
disgrace and contempt the said J. R. and W. H. as such com-  
missioners as aforesaid, and the proceedings of the said com-  
missioners in hearing and determining appeals, came, and  
then and there, to wit, at, &c. aforesaid, scandalized, insulted  
and vilified the said commissioners, so being in the execution  
of their said office, by saying to the said commissioners, in  
the presence and hearing of the said commissioners, these  
false, malicious, scurrilous and contemptuous words fol-  
lowing, that is to say, &c. [*set out the words, and conclude as  
before, and as ante 6.*]

## CHAPTER XV.

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### OF OFFENCES AGAINST PERSONAL PROPERTY.

#### LARCENY. (a)

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##### PRELIMINARY NOTES.

The offence.

[\*917]

*The\* offence in general.* Larceny is the wrongful taking and carrying away of the personal goods of any one from his possession, with a felonious intent to convert them to the use of the offender, without the consent of the owner, 2 East, P. C. 553. 2 Leach, 838. To constitute this offence, therefore, in any form, there must be a taking from the possession, a carrying away against the will of the owner, and a felonious intent to convert it to the offender's use. We will first consider these requisites and then examine the degrees of larceny, and investigate the aggravations by which it may be attended.

[\*918]

I. *There must be a taking from the possession.* And, therefore, if a party lawfully acquire possession of goods and afterwards misapply them, this is no felony, 2 Leach, 835. For all felony includes the idea of trespass, and, therefore, if the party be guilty of no trespass in taking the goods, he can commit no felony in carrying them away, Hawk. b. 1. c. 33. s. 1. Thus if a man find goods, and convert them to his own use, this will be no larceny; and the same rule applies where the party is entrusted with the goods\* for a specific purpose, so that he is invested with a temporary property in them, Hawk. b. 1. c. 33. s. 2. But if he severs part of them

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(a) As to this subject, in general, 4, 5, 6, 7, 8. 2 East, P. C. 524 to see Hawk. b. 1. c. 33. 4 Bla. Com. 791. Burn J. Larceny. Williams J. 229 to 250. Com. Dig. Justices O. Felony. Dick. J. Larceny.

for the purpose of taking, he destroys the privity of the bailment, and commits a new trespass, which makes his offence complete, *id.* s. 4.

In order to determine whether a particular appropriation is larceny, it will be often necessary to enquire whether the owner parted with the property in his effects, or only with the actual possession, retaining still the dominion over them. Thus a shepherd who has the charge of a flock, a butler who takes care of plate, a servant who keeps the key of a chamber, and a guest who has valuable property to use at an inn, have manifestly no interest in the things they are to use or preserve, and may be said with propriety to *take* them, *Hawk. b. 1. c. 33. s. 6.* So if a master delivers property into the hands of a servant for a special purpose, as to leave it at the house of a friend, or deposit with a banker, the latter will be guilty of felony in applying it to his own use, for it still remains in the constructive possession of its owner, *2 Leach, 870.* And if a surrogate gives his clerk a sum of money for the express purpose of buying bank licences, and he embezzles it, he will be criminal, *2 East, P. C. 563.* If a banker's clerk is sent to the money-room to bring cash for a particular purpose, and he takes the opportunity of secreting some for his own use, *1 Leach, 344.*—if a tradesman entrusts goods to his servant, to deliver to his customer, and he appropriates them to himself, *1 Leach, 251.*—if a person wilfully retains goods delivered to him to repair, to cleanse, to pawn, or to preserve, *Hawk. b. 1. c. 33. s. 10.* the parties are respectively guilty of felony. And if several persons play together at cards and deposit money for that purpose, and one sweep it all away and take it himself, he will be guilty of theft if the jury find that he acted with a felonious design, *1 Leach, 270.* But as the property must, at the time of the offence, be either in the actual or constructive possession of the owner, it was held that where a banker's clerk had received a note for the use of his master, and applied it to his own, he was guilty only of a breach of trust, *2 Leach, 835.* In consequence of this determination the 39 Geo. III. c. 85, was passed, which enacts, “ that if any servant or clerk, or any person employed for the purpose or in the capacity of a servant or clerk to any person or persons whomsoever, or to any body corporate or politic, shall, by virtue of such employment, receive or take into his possession any money, goods, bond, bill, note, banker's draft, or other valuable security or effects, for, or in the name, or on account of his master or masters, or employer or employers, and shall fraudulently embezzle, secrete, or make away with the same, or\* any part thereof; every such offender shall be deemed to have feloniously stolen the same from his master or mas-

[\*919]

ters, employer or employers, for whose use, or in whose name or names, or on whose account, the same was or were delivered to, or taken into the possession of such servant, clerk or other person so employed, although such money, &c. was or were no otherwise received into the possession of such master or masters, employer or employers, than by the actual possession of his or their servant, clerk or other person so employed, and every such offender, his adviser, procurer, aider or abettor, shall be liable to be transported for fourteen years, in the discretion of the court in which he is convicted." (b) But though there must be a taking from the actual or constructive possession of the owner, there is no occasion that it should be by the hand of the party accused. For if he procured an innocent agent, as a child or a lunatic to take the property, or if he obtained it from the sheriff by a replevin, without colour of title, and with a felonious design, he will himself be a principal offender, Hawk. b. 1. c. 33. s. 12.

II. *There must be a carrying away.*—And therefore, if a thief cuts a belt on which a purse is hung, and it drops to the ground where he leaves it, or if he compels a man to lay down goods which he is carrying, and is apprehended before he raises them from the ground, the crime is incomplete, 1 Leach, 322. n. b. 1 Hale, 533. And if goods are tied to a string, which is fastened at one end to a counter, and a person intending to steal them take hold of the other, and removes them towards the door as far as the string will permit him, this will be no felony. So where the prosecutor had his keys tied to the strings of his purse in his pocket, which the prisoner endeavoured to take from him and was detected with the purse in his hand, but the strings still hung to the pocket by the keys, this was holden to be no asportation, and therefore no larceny was committed, 1 Leach, 321. n. a. 1 Hale 508. But a very slight asportation will suffice. Thus to snatch a diamond from a lady's ear, which is instantly dropped among the curls of her hair, 1 Leach, 320; to remove sheets from a bed and carry them into an adjoining room, 1 Leach, 222, in notes—to take plate from a trunk, and lay it on the floor with intent to carry it away, *ibid.*—and to remove a package from one part of a wagon to another, with a view to steal, 1 Leach, 236. have respectively been holden to be felonies. But if the defendant merely change the position of a package from lying endways to lengthways, for the greater convenience of taking out its contents, and cuts the outside of it for\* that purpose, but is detected before he has

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(b) See post 935. by whom larceny may be committed, and the precedents.

taken any thing, there will be no larceny committed. Id. *ibid.* in notes.

III. *The taking must be against the will of the owner.* And, therefore, if the goods are taken with the consent or privity of the wife, no larceny will be committed, 1 Leach, 46. But if the owner, in order to detect a number of men in the act of stealing, directs a servant to appear to encourage the design, and lead them on till the offence is complete, so long as he did not induce the original intent, but only provided for its discovery, after it was formed, the criminality of thieves will not be destroyed. 2 Leach, 913. So if a man is suspected of an intent to steal, and another to try him leaves property in his way, which he takes, he is guilty of larceny, 2 Leach, 921. And if, on thieves breaking in to plunder a house, a servant, by desire of his master, show them where the plate is kept which they remove, this circumstance will not affect the crime. 2 Leach, 922.

IV. *The intent must be felonious.* No larceny will, therefore, be committed when the goods are taken on a claim of right, however unfounded: as, if the owner of land takes cattle, damage feasant, or a lord seizes them as estrays, though no real title exists, he will only be liable to an action. 1 Hale, 506, 7. And even when on the seizure of uncustomed goods, a number of persons break into the place where they are deposited, in order to retake them for the original proprietor, they will be guilty of no stealing at common law, though it would be a rescue within the statute. 2 East, P. C. 510. But if there be no pretence or colour of title, though possession be obtained by act of law, as if a house is entered under a fraudulent ejectment and goods seized, or property be obtained by wilful perjury, the offence is rather aggravated than reduced, even in its legal complexion. Kel. 43.

We have seen that a taking by finding, and a subsequent conversion, will not amount to a felony. But if the goods are found in the place where they are usually suffered to lie, as a horse on a common, cattle in the owner's fields, or money from a place where it clearly appears the thief knew the owner to have concealed it, the taking will be felonious. So if a parcel be left in a hackney coach, and the driver opens it, not merely from curiosity, but with a view to appropriate part of its contents to his own use, or if the prosecutor orders him to deliver the package to the servant, and he omits so to do, he will be guilty of felony. 1 Leach, 413. 5. and in notes. What the intent of the party in all cases is, it is the province of the jury to determine, Id. *ibid.*

Where the taking exists, but without fraud, it may amount only to a trespass. This is also a point frequently depending on circumstantial\* evidence, and to be left for the jury's [\*921]

decision. Thus, if two men take horses from a common, and ride with them a considerable distance, then leave them at inns with directions to feed and take care of them, and afterwards are taken walking still further in the country, it will be left to the jury to say, whether they intended to return and remove the horses, or to leave them there for their own purposes, having used them, for if they find the former it will be felony, if the latter, trespass. It depends also on circumstances what offence it is to force a man in the possession of goods to sell them; if the defendant takes them, and throws down more than their value, it will be evidence that it was only trespass; if less were offered, it would probably be regarded as felony. 1 East, Rep. 615. 636. And it seems that the taking may be only a trespass, where the original assault was felonious. Thus, if a man searches the pockets of another for money, and finds none, and afterwards throws the saddle from his horse on the ground, and scatters bread from his packages, he will not be guilty of robbery. 2 East, P. C. 662. though he might certainly have been indicted for feloniously assaulting with intent to steal, for that offence was complete. As the intent must be criminal, it seems scarcely necessary to observe that a taking by mere accident, or mistaking another's property for our own, is neither legally nor morally a crime, 2 Hale, 507. 9.

The most intricate part of the subject consists in deciding, in case the defendant had the actual custody of the goods, at what time the intent to appropriate them to his use arose. But this point can only arise where he had not the property, but only the mere possession of the articles in question. For it is certain, that if the property in effects be voluntarily given, whatever false pretence has been used to obtain it, no felony can have been committed. 1 Hale, 506. Thus, if a horse dealer delivers a horse to another, on his promise immediately to pay for it, on which he rides off and does not return, this is no felony, for an actual sale was completed. 1 Leach, 467. So if a tradesman sells goods to a stranger as for ready money, and sends them to him by a servant, who delivers them, and takes in payment for them bills, which prove to be mere fabrications, this will be no larceny, though the party took his lodgings for the express purpose of obtaining the goods by fraud, because the possession was legally delivered to him. 2 Leach, 614. So fraudulently winning money at gaming, where the party injured really intended to play, is no larceny, though a conspiracy to defraud appear from the evidence. 2 Leach, 610. Nor does it make any difference that the credit was obtained by fraudulently using\* the name of another, to whom it was intended to be given. 1 Leach, 303. in notis. 2 East, P. C. 673. But where the owner sends

[\*922]



goods by a servant to be delivered to A., and B. pretending to be A. obtains them from him, B. is guilty of larceny. 2 East, P. C. 673. And if a sale of goods is not completed, and the pretended purchaser absconds with them, and from the first, his intention was to defraud, he is guilty of stealing. 1 Leach, 92. So to obtain a bill of exchange from an indorsee, under a pretence of getting it discounted, is felony, if the jury find that the party did not intend to leave the bill in the possession of the defendant previous to receiving the money to be obtained on its credit, and that he undertook to discount with intent to convert it to his own use. 1 Leach, 294. So if goods are ordered of a tradesman, and the party seize them before any sale has taken place, and abscond with them, it will be larceny. 1 Leach, 92. And to obtain money from another by ring-dropping is a similar offence, if there was an original design to steal. 1 Leach, 238. 2 Leach, 572. Thus in all cases where a voluntary delivery by the prosecutor is the defence to be relied on, two questions arise; first, whether the property was parted with by the owner; secondly, supposing it was not whether the prisoner, at the time he obtained it, conceived a felonious design. In the first case, no fraud can make a conversion larceny; in the second, the complexion of the offence must depend on the felonious design. As further instances of the first rule, it was held in Walsh's case, that where a party was persuaded by his stock broker to sell out of the funds, and invest the property in exchequer bills, for which purpose he gave him a draft on his bankers for 20,000*l.* which the broker received, and part of which he invested, as directed by his principal, but absconded with the residue, this was no felony, because the prosecutor had parted both with the property and the possession of the money, on the confidence that it would be honestly applied. 2 Leach, 1054. 4 Taunt. 258. This decision occasioned the act 52 Geo. III. c. 63. to be passed, which, after reciting that "it is usual for persons having dealings with bankers, merchants, brokers, attornies, or other agents, to deposit or place in the hands of such bankers, &c. sums of money, bills, notes, drafts, checks, or orders for the payment of money, with directions or orders to invest the monies so paid, or to which such bills, &c. relate, or part thereof in the purchase of stocks or funds, or in or upon government or other securities for money, or to apply and dispose thereof, in other ways, or for other purposes," enacts, that if any banker, merchant, broker, attorney, or other agent, in whose hand any sum or sums of money, bill, note, draft, check, or order, shall be placed with any order or orders in writing, and signed\* by the party or parties who shall so deposit or place the same, to invest such sum or sums of money, or the money

to which such bill, note, draft, check, or order, as aforesaid, shall relate, in the purchase of any stock or fund, or in or upon government or other securities, or in any other way, or for any other purposes specified, in such order or orders, shall, *in any manner*, apply to his or their own use and benefit, any such sum, &c. as hereinbefore mentioned, in violation of good faith, and contrary to the *special purpose* specified, in the direction or order in writing hereinbefore mentioned, *with intent* to defraud the owner or owners of any such sum or sums of money, every person so offending shall be deemed guilty of a misdemeanour, and liable to fourteen years transportation, or such other punishment, as parties guilty of misdemeanours may lawfully receive. s. 2. The same provision is also made, in case any agent, with whom a security has been deposited for a special purpose, shall in any way apply it contrary to the authority on which he holds it. s. 1. (b)

In the following cases the property being in the prosecutor, and the possession in the prisoner, it depended on the original intent whether the latter was guilty of felony, or a mere breach of confidence. Thus, where a house was burning, and a neighbour took some of the goods, as if to save them from the flames, and afterwards converted them to his own use, it was holden no felony, because the jury thought the original design honest, 1 Leach, 411. notes. On the other hand, where the defendant obtained a horse, under pretence of hiring it for a day, and immediately sold it, he was holden guilty of felony, because the jury found that he acted *animo furandi* in making the contract, 1 Leach, 212. So where a person hires a post chaise for an indefinite length of time, and converts it to his own use, he may be convicted of larceny if his intent was felonious, 1 Leach, 420. And it seems, that if a person procure possession of a house, with an intent to steal the lead affixed to it, he may be indicted on 4 Geo. II. c. 32. for the statutable larceny. 2 Leach, 850.

[\*924] There are yet to notice a few cases of another kind, in which a possession was delivered *bona fide*, not obtained by fraud, but which ceases in consequence of some act of the bailee, that makes legal possession revert to the owner, and consequently renders any subsequent conversion felonious. The most remarkable case of this description is that of a carrier. It is perfectly settled that his approbation, during the journey, of a whole package to his own\* use is a mere breach of trust, but if he opens it, and takes out some of the goods, he is guilty of felony, because this act determines the contract under which he had a qualified property in the effects. So if he take the whole to the place appointed, and

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(b) See Post : a precedent on this clause, where it is recited at length.

delivers them or lays them down, if he afterwards take them, he will be placed in the same condition, because all property in the goods is ended, 1 Hale, 504, 3 Inst. 107. So if a parcel be delivered to a porter, and he run away with it, and in the pursuit it is lost, it will be left to the jury to say, whether he opened it and took out goods, or preserved it entire; and on the decision of this point, the legal guilt or innocence of the party will depend. 2 East, P. C. 697. And if corn be sent to a miller to grind, and he take part of it, he will be guilty of felony; because there is a severance which constitutes a trespass, and a felonious conversion. 1 Rol. Abr. 73.

*With respect to the degrees of Larceny.* Larceny, at common law, when not made capital on account of some aggravating circumstance, is either grand or petit, according to the value of the article stolen; it is grand when the thing in question exceeds the value of twelve pence, and petit when it amounts to no more than that sum. But in estimating the value of the property, the jury may make a reasonable allowance for the difference in the value of money, which has taken place since the statute of Westminster the Second. And several petit larcenies cannot be added together in order to constitute one offence of a higher degree. 1 Leach, 294. acc. 1 Hale, 531. cont. But if the property of several persons be stolen at one time, the whole may be considered as one taking, and will amount to grand larceny. 1 Hale. 531. And if two persons on the same occasion steal goods to the amount of twelve pence between them, both will be guilty of grand larceny, since both were alike criminal. 1 Hale, 530, 1. In taking the verdict in any kind of simple larceny, the jury should always be asked the value, that the court may know what sentence they ought to pronounce, or it will be like a verdict in a civil action, where the jury should find for the plaintiff, but neglect to give him damages. 2 East, P. C. 741.

Both grand and petit larceny are, at common law, felonies; but petit larceny was never punishable with death, but only with whipping, imprisonment, and other corporal penalties. Theft, above the value of twelve pence was, on the other hand, punishable with death by the Saxon laws, though the offender was permitted to redeem his life by a pecuniary ransom. But, in the reign of Henry the First, this power of redemption was taken away, and the punishment of grand larceny became capital. Except, however, in those cases where\* circumstances of aggravation or state policy have called for more exemplary penalties, it has always been admitted to clergy. The party, therefore, who was convicted of this offence, was liable to those penalties which are inflicted on the allowance of that privilege. These, by 4 Geo. I. c. 11. have been rendered specific. That statute directs,

Of the  
degrees of  
larceny.

[\*925]

that "where any person or persons shall be convicted of grand or petit larceny, or any felonious stealing or taking of money, or goods and chattels, either from the person or the house of any other, or in any other manner, and who by law shall be entitled to the benefit of clergy, and liable only to the penalties of burning in the hand, or whipping (except persons convicted for receiving or buying stolen goods, knowing them to be stolen) it shall and may be lawful for the court, before whom they were convicted, or any court holden at the same place, if they think fit, instead of ordering any such offenders to be burned in the hand or whipped, to order them to be transported for seven years. The punishment, therefore, for the first offence in larceny, whether grand or petit is, at the present day, nearly similar. But still the distinction between them is important, because, as clergy is prayed in the former, a second offence is capital. And there are cases where clergy is taken away in larceny, as in case of horses and cattle, where, if the property be found to be under the twelve pence, sentence of death may be avoided; for where clergy need not be prayed, nothing can result from its denial. 1 Hale, 531. Thus before the repeal of 8 Eliz. c. 4. if a man stole privily within this value, it was not within the statute. And there was a case in which a horse was stolen, of so meagre and worthless a quality, that Mr. J. Foster recommended the jury to find the prisoner guilty of stealing within the value of twelve pence, with which suggestion they acquiesced, and the party was transported. 2 East, P. C. 741. To peers and clergymen on the other hand, the commission of grand is less penal than petit larceny. For as benefit of clergy may be prayed on the former, peers for the first offence, and clergymen as often as they require it, must be discharged without any punishment on their prayer, and if convicted of the latter, as clergy is neither asked nor given, they must suffer like common offenders. In either case their goods are forfeited.

Larceny may be further considered with respect to the *property* in the taking of which it may be committed, and the aggravations it derives from the *things* taken, the peculiar *situation of the offender*, the *place* where it occurs, and the *person* from whom taken.

[\*926]  
The *things*  
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*In respect of what things larceny may be committed.* At common law, larceny relates only to things strictly personal, and cannot take place\* in respect to any thing annexed to to the freehold. And, therefore, it is no felony to steal corn or grass growing, fruit from trees, or lead from houses, except when made so by statute, though if once they are served, they become the subjects of larceny. 1 Hale, 509, 510. Nor is it an indictable offence to purloin things, which how-

ever valuable in their relations to other things, have no worth in themselves, as the title deeds of an estate, a commission to settle the boundaries of manors, securities, choses in action. 2 Stra. 1133. Hawk. b. 1. c. 33. s. It is also no offence to take things of a base nature, as dogs, cats, bears, foxes, monkeys and ferrets, whatever value the owner may set on them; though a hawk was, it seems, an exception at common law, independently of 37 Edw. III. c. 19. on account of the high value set on that bird in former times. Hawk. b. 1. c. 33. s. 36. Nor can any animals, *feræ naturæ* and unreclaimed, as deer, hares, or conies, in a forest, chase, or warren, or fish in a river or large piece of water, where they enjoy their natural freedom. 1 Hale, 510, 1. After they are killed however, their flesh and skin are subjects of larceny. 1 Hale, 511. And all the domestic animals, and beasts *domitæ naturæ*, all wild animals that are tamed, or closely confined in a net, or otherwise, and their eggs, are under the protection of the law like other personals, though this does not apply to marked swans which fly abroad beyond the premises of the owner. id. ibid. At common law, also, the taking treasure trove, which properly belonged to no one, was not felony, though it has been made so by act of parliament. 1 Hale, 511.

larceny by reason of the nature of the thing stolen.

These rules of common law have, however, been greatly narrowed by a variety of statutes. By 6 Geo. III. c. 36. to "lop, top, cut down, break, throw down, bark, burn or otherwise spoil or destroy, or carry away any oak, beech, ash, elm, fir, chesnut, or ash timber tree, or other tree or trees," standing for timber, without the consent of the owner, and pluck up, dig up, break, spoil, or destroy, or carry away any root, shrub, or plant, of the value of five shillings, growing in a garden or other enclosed ground, in the night time, or to aid and abet, such act is made felony, and punished with transportation for seven years. Another act passed in the same session, 6 Geo. III. c. 48. s. 3. punishes the taking or spoiling roots, shrubs and plants, with the forfeiture of a sum not exceeding forty shillings for the first offence, five pounds for the second, and, if timber trees, with the loss of twenty pounds for the first, and thirty pounds for the second, and makes the third offence of both kinds felony, punishable with transportation for seven years. This last statute has been holden not to repeal the former; for it applies generally to all seasons, whereas the first specifies only the night, and,\* as it is passed in the same session, it must be taken in *pari materia*, as forming one system of law, on which latter ground alone, Mr. Justice Buller held both acts to be in force, 1 Leach, 481. 2 East, P. C. 588. The latter provision also

Trees, roots, shrubs, and plants.

[\*927]

declares that "all oak, beach, chesnut, walnut, ash, elm, cedar, fir, asp, lime, sycamore and birch trees, shall be deemed timber trees, within its meaning; to which the 13 Geo. III. c. 33. adds poplar, alder, larch, maple and hornbeam, and puts them on the same footing with the enumerated in the prior statute. By 13 Geo. III. c. 32. the stealing or maliciously destroying turnips, potatoes, cabbages, parsnips, pease or carrots, from any grounds, open or enclosed, is subjected to a small fine, and in default of payment to imprisonment, on a summary conviction before a magistrate.

Lead,  
iron, &c.

"Unlawfully to break, or by force enter into any mine, wadhole, pit, shaft, adit or vein of wad, or black cawke, commonly called black lead, with intent to take and carry away from thence, any wad, black cawke, or black lead—and to take and carry away any wad, &c. although the mine, &c. be not actually broke or entered into by force—and to aid or counsel either are by 25 Geo. II. c. 10 made punishable either with imprisonment and hard labour for a year, and public whipping, or transportation for seven years, as the court shall think proper. And all receivers of lead, &c. so stolen, are made subject to the same penalties, with those who receive stolen goods from parties guilty of larceny at common law, s. 3. In all indictments under this act, the venue may be laid in the county where the offender escaped, or in that in which he was taken. s. 1. By 4 Geo. II. c. 32. all persons "who shall steal, rip, cut or break with intent to steal any *lead, iron, bar, iron gate, iron palisado, or iron rail*, whatsoever, being fixed to any dwelling house, out house, coach house, stable or other building, used or occupied with such dwelling house, or thereunto belonging, or to any other building whatsoever, or fixed in any garden, orchard, courtyard, fence or outlet, belonging to any dwelling house, or other building," shall be guilty of felony—as well aiders and abettors as principals, and be transported for seven years. The 21 Geo. III. c. 68. extends this provision to copper, brass and bell metal; only giving the court authority to inflict imprisonment and hard labour from one year to three, and public whipping, not exceeding three times, instead of transportation, at their own pleasure. A church has been holden to be a building within the meaning of these statutes, 1 Leach, 318.

Records  
and choses  
in action.  
[\*928]

We have seen that neither *records nor choses in action* are things in taking which larceny at common law can be committed. But by\* 8 Hen. VI. c. 12. s. 3. if any record or parcel of the same, writ, return, panel, process or warrant of attorney, in the king's courts of chancery, exchequer, the one bench or other, or in his treasury, be willingly stolen, taken away, withdrawn or avoided by any clerk or by other



person, because whereof any judgment shall be reversed; such stealer, taker away, withdrawer or avoider, their procurators, counsellors and abettors thereof, indicted and by process thereupon, made thereof, duly convict by their own confession, or by inquest to be taken of lawful men, (whereof the one half, shall be of the men of any court of the same courts, and the other half of other,) shall be judged for felons and shall incur the pain of felony. And that the judges of the said county, the one bench or of the other, have power to hear and determine such defaults before them, and thereof make due punishment as aforesaid." This act extends only to the courts expressly mentioned in it, and to the court of chancery only so far as it proceeds according to the rules of common law. It does not include the judges because clerks are named first, who are their inferiors. 1 Hale, 649, 650. The term *avoiding* in the act is very comprehensive, for it includes rasing, cutting off, clipping and cancelling a record, 1 Hale, 650. Though the judges are not included in this act, they are by 8 Rich. II. c. 4. to pay a fine to the king and make satisfaction to the party injured, for falsely entering pleas, rasing rolls, or changing verdicts to the disherison of any one. 1 Hale, 649. With respect to choses in action, the 2 Geo. II. c. 25. s. 3. enacts, "that if any person or persons, shall steal or take by robbery any exchequer orders or tallies, or other orders, entitling any other person or persons to any annuity or share in any parliamentary fund, or any exchequer bills, bank notes, South Sea bonds, East India bonds, dividend warrants of the bank, South Sea company, East India company or any other company, society or corporation, bills of exchange, navy bills, or debentures, Goldsmith's notes for the payment of money, or other bonds or warrants, bills or promissory notes for the payment of any money, being the property of any other person or persons, or of any corporation, notwithstanding any of the said particulars are termed in law a chose in action, it shall be deemed and construed to be felony of the same nature and in the same degree, and with or without the benefit of clergy, in the same manner as it would have been if the offender had stolen or taken by robbery any other goods of like value with the money due; on such orders, tallies, bills, bonds, warrants, debentures or notes respectively, or secured thereby and remaining unsatisfied, any law to the contrary thereof in any wise used notwithstanding." This act was but temporary, but, after its expiration, was revived and\* made perpetual by 9 Geo. II. c. 18. Under this statute, the circumstance of a promissory note not being indorsed is immaterial. 2 East, P. C. 598. And though it mentions bank notes, &c. in the plural number, to steal a single note is fe-

lony within its meaning. 1 Leach, 1. But to compel a party to give a promissory note by duress, using the pen, ink, stamp and paper of the defendant, so that the prosecutor never had peaceable possession of the instrument, is no larceny. 2 Leach, 673. (c)

Animals  
feræ na-  
turæ,

We have seen that *animals feræ naturæ*, are not at common law subjects of larceny. But by 1 Hen. VII. c. 7, the unlawful hunting in any forest, park or warren, being private property, in warlike array, by night, or with painted faces, &c. is felony. This act is superseded by 9 Geo. I. c. 22. which enacts "That if any person or persons being armed with swords, fire arms, or other offensive weapons, and having his or their faces blacked, or being otherwise disguised, shall appear in any forest, chase, park, paddock, or grounds inclosed with any wall, pale, or other fence, wherein any deer have been or shall be usually kept, or in any warren or place where hares or conies have been or shall be usually kept, or in any high road, open heath, common or down, or shall unlawfully and wilfully hunt, wound, kill, destroy or steal any red or fallow deer, or unlawfully rob any warren or place where conies or hares are usually kept, or shall unlawfully steal or take away any fish out of any river or pond; or if any person or persons shall unlawfully and wilfully hunt, wound, kill, destroy or steal any red or fallow deer, fed or kept in any places, in any of his majesty's forests or chases, which are or shall be inclosed with pails, rails, or other fences, or in any park, paddock, or grounds inclosed, where deer have been or shall be usually kept—or shall forcibly rescue any person being lawfully in custody for any of the said offences—or shall, by gift or promise of money or other reward, procure any of his majesty's subjects to join in any of the acts mentioned in the statute—they shall be guilty of felony without benefit of clergy." But all that part of the act which respects the killing, &c. of deer, not being armed or disguised, is holden to be repealed by 16 Geo. III. c. 30. which punishes the first offence with a pecuniary fine, and makes the second a single felony. It seems to be the better opinion that stealing a fish from a pond was larceny at common law. Hawk. b. 1. c. 33. s. 39. 3 Inst. 109. Fost. 366. And by 5 Geo. III. c. 14. to enter into any park, or paddock, fenced in, or inclosed, or into any garden, orchard, or yard adjoining or belonging to any dwelling house in or through which park, &c. any river or stream\* of water shall run or be; or wherein shall be any river, stream, pond, pool, mote, stew, or other water; and by any means or device whatsoever to steal, take, kill, or destroy any fish, bred, kept, or preserved in any such

[\*930]

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(c) See precedent, and notes on the offence and indictment, post.

river, &c. without the consent of the owner is made a misdemeanor, punishable with transportation for seven years. Under this act, the defendant must be indicted within six calendar months after the offence is committed, and the trial must be had before the justices of gaol delivery for the county in which the inclosure is situate. But the 42 Geo. III. c. 107. makes the coursing, taking or destroying deer without the consent of the owner *felony*, and punished it with transportation for a similar period.

In order better to protect the *oyster* fisheries of this kingdom, the 31 Geo. III. c. 51. enacts "that if any person or persons, shall with or by any means of any net, trawl, dredge, or other instrument or engine whatsoever, take or catch any oysters or oyster brood within the limits of any oyster fishery of this kingdom, or shall dredge for oysters or oyster brood, or use any oyster dredge, or any net, instrument, or engine whatsoever, within the limits of any such fishery for the purpose of taking or catching oysters or oyster brood shall be actually taken, or shall with any net, instrument or engine, drag upon the ground or soil of any such fishery, all and every, person and persons, (other than and except such persons as shall be owners, lessees, or occupiers of such fishery, or shall be otherwise lawfully entitled to take or catch oysters therein,)" shall be deemed guilty of a misdemeanor, and, on conviction by indictment at the sessions or the assizes for the county in which the fishery lies, shall be punished by fine and imprisonment, the fine not to be less than forty shillings nor more than twenty pounds, and the imprisonment to endure for a term, not longer than three nor shorter than one month. But this statute does not extend to the taking of floating fish, in any way, within oyster fisheries. s. 2. After this act, it was held, that no felony could be committed in stealing oysters, 5 Esp. Rep. 62. And this provision being deemed inadequate to secure the brood of oysters from depredation, the 48 Geo. III. c. 144. enacts, "that every person who shall knowingly and wilfully steal, take, and carry away any oysters or oyster brood, from any oyster bed or oyster laying, or oyster fishery, being the property of any person or persons, or body or bodies, politic or corporate, and sufficiently marked out as such, shall be deemed guilty of felony, and shall and may be transported for any term not exceeding seven years, or be imprisoned and kept to hard labour in any common gaol or house of correction, or penitentiary house, or imprisoned only for any term not exceeding three years, as the court\* before whom any such person so convicted may adjudge. This statute does not extend to persons who either have or claim to have a right of taking oysters, s. 2. nor does it repeal the former provision, s. 5.

Oysters  
and oys-  
ter brood,  
&c.

[\*931]

On the trial, justices of the peace for towns may act in the same way as justices for counties, when offences of this kind arise in their own jurisdictions, s. 4.

**Rabbits.**

By 5 Geo. III. c. 14. s. 6. "if any person wilfully and wrongfully in the night time enter into any warren or grounds lawfully used or kept for the breeding or keeping of conies, although the same be not inclosed, and shall then and there wilfully and wrongfully take or kill in the night time any coney or conies against the will of the owner or occupier thereof, or shall be aiding and assisting therein, and shall be convicted of the same before any of his majesty's justices of Oyer and Terminer, or general gaol delivery for the county where such offence or offences shall be committed," he shall be transported for seven years, or suffer such other lesser punishment, by whipping, fine, or imprisonment as the court shall think proper. The 22 and 23 Car. 2. c. 25. s. 4. makes the party who commits such an offence either by night or day, liable to penalties on conviction before a magistrate. And we have seen that by 9 Geo. I. c. 22. to do so armed or disguised is felony without benefit of clergy.

**Dogs.**

At common law, *dogs* were considered as animals of base nature, and the property in them not at all protected by any criminal enactment, but by 10 Geo. III. c. 18. to steal them is made punishable upon conviction before two justices.

**Horses.**

*Horses* are protected by more severe regulations than most other animals. By 1 Edw. VI. c. 12. s. 10. feloniously stealing any horses, geldings, or mares, is excluded from the benefit of clergy. Under this act, it was doubted whether the stealing a single horse could be intended. And, therefore, the 2 and 3 Edw. VI. c. 33. expressly removes this doubt, and makes the taking of one horse capital. It seems uncertain from the language of the last provision which speaks only of persons convicted by verdict, confession, or standing mute, whether it extended to those who peremptorily challenged more than twenty jurors. But, at all events, this event is provided for by 3 and 4 W. and M. c. 9. which supplies that *casus omissus* in respect of many offences. The 31 Eliz. c. 12. s. 5. takes away clergy from accessaries, both before and after the fact, in horse stealing. But this applies only to such as were considered as accessaries at the time it was passed, and therefore, the receiver of a stolen horse, though made an accessory after by 3 and 4 W. and M. c. 9. is not excluded from clergy. Fost. 372, 3.

**[\*932]  
Sheep and  
other cat-  
tle.**

The\* 14 Geo. II. c. 6. enacts, "That if any person shall feloniously drive away, or in any other manner feloniously steal one or more *sheep*, or other cattle, of any other person or persons whatsoever, or shall wilfully kill one or more sheep or other cattle, of any other person or persons whatso-

ever, with a felonious intent to steal the whole carcase or carcasses, or part or parts of the carcase or carcasses of any one or more sheep or other cattle that shall be so killed," or aid in the commission of such offences—shall be guilty of felony without benefit of clergy. The meaning of the words "or other cattle," are by 15 Geo. II. c. 34. explained, to include bulls, cows, oxen, steers, bullocks, heifers, calves and lambs, and no other cattle whatsoever. Where it is larceny to steal the animal itself, it is so to steal its product, and therefore, to take milk from a cow, or to pluck wool from the backs of sheep, if done *animo furandi* and not merely by way of frolic, is single felony though a trifling quantity be taken. 1 Leach, 171, 2.

The 7 Geo. III. c. 50. s. 2. enacts "That if any person shall *rob any mail* in which *letters* are sent or conveyed by the post, of any letter or letters, packet or packets, bag or mail of letters, or shall steal and take from or out of any such mail, or from or out of any bag of letters sent or conveyed by the post, or from or out of any post office, or house, or place for the receipt or delivery of letters or packets, sent, or to be sent by the post any letter or packet;" although such stealing shall not appear or be proved, to have been from the person upon the king's highway, in a dwelling house, or by putting in fear, he shall be guilty of felony without benefit of clergy. In the construction of this act, it has been holden, that if a man procure bags of letters to be delivered to him, under pretence of being the guard to the mail, which are let down to him from a window of the post office, this will be stealing from the post office within its meaning. 2 East, P. C. 603. But the act does not extend to servants employed in the post office, and into whose hands letters may lawfully come, if they embezzle and detain them. 2 Leach, 904. Nor does it apply where the party obtains the letters, not for the purpose of detaining them, but of receiving and embezzling the postage. 1 Leach, 81, 83. in notis. (d)

By 26 Geo. II. c. 19. If any person shall plunder, steal, take away, or destroy any goods or merchandizes, or other effects, from or belonging to any *ship or vessel* of his majesty's subjects, or others, which shall be in *distress*, or which shall be *wrecked*, lost, stranded, or cast on shore, or any part of his majesty's dominions,\* (whether any living creature be on board such vessel or not) or any of the furniture, tackle, apparel, provision, or part of such ship or vessel; or shall beat or wound with intent to kill or destroy, or shall otherwise willfully obstruct the escape of any person endeavouring to save his or her life

Wrecks;  
&c.

[\*933]

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(d) As to embezzlement by persons employed in the post-office, see post 936.

from such ship or vessel, or the wreck thereof; or shall put out any false lights with intention to bring any ship or vessel, into danger, shall be guilty of felony without benefit of clergy. But by s. 2. when the goods stolen from the shore are of small value, and taken without circumstances of cruelty, outrage, or violence, the offender may be indicted as for petit larceny.

**Woollens.** By 15 Geo. II. c. 27. s. 1. If any cloth or *woollen goods* on the rack or tenters, or woollen yarn, or wool, left out to dry, be stolen in the night, a justice of the peace may issue his warrant to search suspected places, and if the person in whose custody they are found, can give no satisfactory account how or from whom he received them, he must be convicted of stealing them, and for the first offence, forfeit the treble value or be imprisoned three months; for the second offence forfeit treble the value and also be imprisoned six months; and for the third offence be adjudged guilty of felony and be transported for seven years. This act applies only to the case in which it is thrown on the possessor to justify his possession. For the offence may be indicted under 22 Car. II. c. 5. s. 3. which makes it felony without benefit of clergy, but allows the court to reprieve the offender and transport him for seven years. But in this act, accessories are not included.

**Linens and other cloth.** The 27 Geo. II. c. 27. enacts that "every person who shall by day or night feloniously steal *any linen*, fustian, calico, cotton, cloth, or cloth worked, woven, or made of any cotton or linen yarn mixed' or any thread, linen or cotton yarn, linen or cotton tape, inkle, filletting, laces, or any other linen, fustian, or cotton goods or wares whatsoever, laid, placed, or exposed to be printed, whitened, bowked, bleached, or dried in any whitening or bleaching croft, lands, fields, or grounds, bowking house, drying house, printing house, or other building, ground, or place made use of by any calico printer, wister, crofter, bowker, or bleacher, for printing, whitening, bowking, bleaching, or drying of the same, to the value of ten shillings, or who shall aid or assist, or shall wilfully or maliciously hire or procure any other person or persons to commit any such offence, or who shall buy or receive any such goods or wares so stolen, knowing the same to be stolen as aforesaid, shall be guilty of felony without benefit of clergy." But it is provided that the court may, instead of giving judgment of death, order the offender to be transported for fourteen years, and\* to return within that time is made capital. But by the 51 Geo. III. c. 41. this act is repealed, and instead of death, the same offences as recited in the former act are punished with transportation for life or for any period not less than seven years, or with hard labour in a

[\*934]



house of correction, or penitentiary house, for any time not exceeding seven years, at the discretion of the court in which the offender is convicted. The 4 Geo. III. c. 37. s. 16. makes the breaking into any building with intent to steal, cut, or destroy any linen, yarn, cloth, &c. felony without benefit of clergy. If it appears on the trial that the yarn stolen had been taken up and thrown into heaps before it was carried into the house at the time it was stolen, it will not be within the protection of the statutes, and the prisoner can only be convicted of simple larceny. 4 Bla. Com. 240 n. (13).

The 31 Eliz. c. 4. s. 1. enacts. That if any person having the charge or custody of any armour, ordnance, ammunition, shot, powder, or habiliments of war, of the queen's majesty's, her heirs, or successors, or of any victuals provided for the victualling of any soldiers, gunners, mariners, or pioneers, shall for any lucre or gain, or wittingly, advisedly and of purpose to hinder or impeach her majesty's service, embezzle, purloin or convey away any of the said armour, &c. to the value of twenty shillings, at one or several times, he shall be guilty of felony, but the prosecution must be commenced within a year. s. 2. The term *habiliments* extends to harness and all implements that belong to war. 3 Inst. 79. The 22 Car. II. c. 5. takes away clergy from the offences made felony by 31. Eliz. and annexes the same penalty to the embezzlement of naval stores. But the court may commute the punishment of death into transportation for seven years. By 9 and 10 W. III. c. 41. the making any naval stores is prohibited under penalty of forfeiture; and two hundred pounds fine besides costs of action, and having them in possession, without lawful cause, is made subject to similar penalties. Power was by 9 Geo. I. c. 8. given to the magistrate before whom the party should be convicted, to mitigate the felony at discretion, and to commit till the lessened forfeiture is paid, or to punish the offender corporally, by causing him to be publicly whipped or kept to hard labour in a workhouse for six months, or a less time, in his discretion. The 17 Geo. II. c. 22. gives to judges at the assizes, and justices at sessions, power to try all offences against the former acts by indictment or otherwise, and, on conviction, to impose any fine not exceeding 200*l.* or to punish the offender by whipping and three months confinement to hard labour. And the 39 and 40 Geo. III. c. 89. s. 2 makes corporal punishment by pillory, whipping and imprisonment, or either of them singly, to the\* pecuniary fine which before were in the alternative. But this act has been holden to take away the power of directing the offender to be kept to hard labour in prison, 8 East 53.

Naval and  
military  
stores.

[\*935]

bank post bill, bill of exchange, exchequer bill, South Sea or East India bond, dividend, warrant of the bank, South Sea, East India, or any other company, society, or corporation, navy, or victualling, or transport bill, ordnance debenture, seaman's ticket, state lottery ticket, or certificate, bank receipt for payment on any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds, or belonging to any company, society or corporation. American provincial bill of credit, goldsmiths' or banker's letter of credit or note for, or relating to the payment of money or other bond, or warrant, draft, bill, or promissory note whatsoever for the payment of money, or shall steal and take out of any letter or packet that shall come to his hands or possession, any such bank notes, &c. (as before) he shall be deemed guilty of felony without benefit of clergy." In order to bring a person within this act, it is not necessary that he should have taken the oath prescribed by 9 Ann, c. 10. s. 41. but stealing a letter containing money itself and not an instrument securing it, is not within this statute, 1 Leach, 106. nor will a draft, in itself invalid, on the ground of the defect or want of the stamp, if taken in a letter by a person employed by the post office, be such a draft for the payment of money as to subject the offender to be indicted under it, 2 Leach, 887. 3 Bos. and Pul. 311. And though the letter will be evidence on an indictment upon the second section of 7 Geo. III. c. 50. for stealing the letter, yet as it has been holden that no person employed in the post office can be guilty under the last provision, it will be in vain to indict him on that clause, 2 Leach, 900, 904. And, indeed, there seems to be no statute by which a servant of the post office can be punished for merely embezzling a letter unless it contains some of the securities which 7 Geo. III. specially protects. Country bank notes, however, that have been paid, and which the owners have the power to re-issue, are within the statute, 2 Leach, 1090. and part of a valid instrument will suffice; for it was holden that if a person employed by the post office secrete one day a letter containing half a bank note, and another letter at a different time containing the other half of it, his offence will be complete. 2 Leach, 575. And now by 42 Geo. III. c. 81. it is expressly declared a capital offence to secrete, embezzle, or destroy any letter containing a *part* of any instrument named in the former statute. The 52 Geo. III. c. 143. which restores clergy in many offences against the revenue where it had been previously denied, not only confirms the severity of the 7 Geo. III.\* but extends it to both procurers and abettors, whether the principal felon be or not amenable to justice.

An embezzlement for the mere purpose of obtaining the postage, is not capital, 1 Leach, 81. 3. But by 5 Geo. III. c. 25. s. 19. if any deputy, clerk, agent, letter carrier or other servant appointed, authorised, and entrusted to take in letters or packets and receive the postage thereof, shall embezzle, or apply to their own use any money or monies by him received, with such letters or packets for the postage thereof, or shall burn, or otherwise destroy any letter or letters, packet or packets, by him so taken in or received; or who by virtue of his office shall advance the rates upon letters or packets sent by the post, and shall not duly account for the money by him received for such advanced postage, shall be guilty of felony. But the clause in 7 Geo. III. c. 50. on this subject is, in some respects, differently worded; it enacts, "that if any deputy, clerk, agent, letter carrier, officer, or other person whatsoever employed in any business relating to the post office, shall take and receive into his own hands and possession any letter or letters, packet or packets, to be forwarded by the post, and receive any sum or sums of money therewith for the postage thereof, shall burn, or otherwise destroy any letter or letters, packet or packets, by him so taken in or received; or if such deputy, &c. (as before) so employed shall advance the rate or rates of postage upon any letter or letters, packet or packets, sent by the post, and shall secrete and not duly account for the money by him received for such advanced postage, he shall be deemed guilty of felony." This last act seems to be the more proper one on which to frame indictments at the present day, because, though it does not expressly repeal the former provision, it is entitled "an act for amending certain laws relating to the revenue," &c. and, therefore, probably intended to supersede the regulations, on the same subject, which then were in existence.

It was formerly thought that a person inhabiting *furnished Lodgers. lodgings* could not be guilty of larceny in taking away the furniture let to him, and which he had a right to use, Kel. 24. 81, 2. To put an end to all doubt on this subject, the 3 and 4 W. and M. c. 9. enacted that if any person shall take away with intent to steal, embezzle, or purloin any chattel, bedding or furniture, which by contract or agreement he or they are to use, or shall be let to him to use, in or with such lodging; such taking, embezzling, or purloining, shall be to all intents and purposes taken, reputed, and adjudged to be larceny and felony, and the offender shall suffer as in case of felony, s. 5. But where a man takes a whole house ready furnished, and, at the same time, enters into an agreement to pay for whatever articles may be missing when his term expires, he\* will not be guilty of larceny within this statute by taking any of the moveables from the premises, 2 Leach, 680.

Manufac-  
turers.

The 17 Geo. III. c. 56. s. 1. directs that if any person employed in the felt or hat, woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, or silk manufactures or in manufactures of the said materials mixed one with another, shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the materials with which they are entrusted, whether wrought up or not, he shall be punishable before two justices, on summary proceedings, for the first offence by being kept in prison to hard labour for not less than fourteen days, nor more than three months, and for any subsequent offence, for not less than three, nor more than six months, and, in either case, the magistrates may order the offender to receive a public whipping. By the same act also, those who in any way receive the property so purloined are, on a like summary conviction, to forfeit from ten to forty pounds, and on failure of payment thereof, to be committed from three to six months, or for three days and once publicly whipped; for a second offence, the party accused shall be committed to the sessions, and, on conviction, lose from fifty to one hundred pounds, or, in default, to be subject to the same penalties as for the first, s. 3, 4. And any one selling, pawning, pledging, exchanging, or otherwise unlawfully disposing of any of the property so embezzled are subject to the same punishment with the principal offender.

Of larceny from particular places.

Larceny may be aggravated in its quality by the *place* in which it is committed. As the legislature thought it necessary to take away clergy from persons who steal sheep, or other cattle, on the ground that this kind of property being in the fields is so much exposed to depredation, they have thought it expedient to resort to the same severity in order to punish the outrage of those who steal in private dwellings. We will examine the cases in which this is done; 1st. in larcenies to the value of forty shillings; 2dly. to the value of five shillings; and 3dly. to the value of one shilling; below which last amount no mere larceny, except from the person, is capital.

Stealing to the value of forty shillings or more.

[\*940]

I. The 12 Ann, s. 1. c. 7. enacts that every person who shall feloniously steal any money, goods, wares, or merchandizes, of the value of *forty shillings or more*, being in any dwelling-house or out-house thereunto belonging, although such house or out-house be not actually broken by such offender, and *although (f)* the owner of such goods or any other person or persons be or be not in such house or out-house, or shall assist or aid any person to commit any such\* offence, shall be guilty of felony without benefit of clergy.

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(f) This should be *whether* to make the statute either grammar or sense.

But it is provided that this act shall not extend to apprentices under fifteen years of age, who rob their masters to the amount specified in the statute. In the construction of this act it has been resolved that to constitute the offence, the party must steal to the whole amount of forty shillings at one time, and a number of acts of larceny cannot be accumulated together in order to complete that value. 1 Leach, 294. A dwelling-house within the meaning of this act must be such an one in which burglary may be committed, and not inhabited casually as by a person who is placed there to sleep merely for the purpose of taking care of furniture till a tenant can be obtained, 2 East, P. C. 499. Chambers in an inn of court fall, however, within the intention of the act. Cro. Car. 474. No man can be guilty under it by stealing in his own house, nor a woman in that of her husband, 1 Leach, 338. in notis. The act being intended to apply to property deposited in the house and under its protection, does not extend to effects taken from the person, though within it; and, therefore, where a lodger obtained a bank note from the mistress of the house under pretence of getting it changed and absconded with it, (2 Leach, 564.) and where the defendant procured the prosecutor to part with money under other false pretences, (2 East, P. C. 645, 6.) the offence was holden to be simple larceny. The stealing of a bank note is within this act, though that was not a valuable thing at the time it was passed, on the ground that the 2 Geo. II. c. 25. has placed these securities, in regard to a larceny, on a footing with the money they profess to secure, 2 Leach, 693. ante 928, 9.

The 24 Geo. II. c. 45. enacts, "That every person who shall feloniously steal any goods, wares, or merchandize, of the value of forty shillings in any ship, barge, lighter, boat, or other vessel or craft, upon any navigable river, or in any port of entry or discharge, or in any creek belonging to any navigable river, port of entry, or discharge, within the kingdom of Great Britain, or shall feloniously steal any goods, wares, or merchandize, of the value of forty shillings, upon any wharf or key adjacent to any navigable river, port of entry, or discharge," with the aiders to the crime, shall be guilty of felony without benefit of clergy. Money has been holden not to be "goods, wares, or merchandize" within the meaning of this act, even though it be foreign coin which the royal proclamation has not made current, 1 Leach, 52, 3. And the property should be such as is usually deposited in ships or wharfs, and not attached to the person; for the same principle which governs the stealing in houses is equally applicable to places which this statute protects, id. ibid. ante 939, 940.

Stealing  
to the  
value of  
five shil-  
lins.

[\*941]

The\* 39 Eliz. c. 15. s. 1. excludes from clergy all persons “found guilty and convicted by verdict, confession, or otherwise, according to law, for the felonious taking away, in the day time, of any money, goods, or chattles, being of the value of *five shillings* or upwards in any dwelling house or houses, or any part thereof, or any out house or out houses belonging to and used with any dwelling house or houses, although no person shall be in the said house or houses at the time of such felony committed.” And by 3 & 4 W. & M. c. 9. s. 2. those who stand mute, answer indirectly, challenge peremptorily above 20, or are outlawed, are placed in the same condition with those who are convicted; and it is enacted, that every person who shall comfort, aid, abet, assist, counsel, hire or command another “to break any dwelling house, shop, or warehouse thereunto belonging or therewith used, in the day time, and feloniously take away any money, goods, or chattles of the value of *five shillings* or upwards, therein being; although no person shall be within such dwelling house, shop, or warehouse,” shall be deprived of clergy. It may be observed that the term *out house* is dropped in the last act, and those of “shop or warehouse,” introduced in its room, from which circumstance, it seems doubtful whether in case an out-house be broken open which does not fall within the latter description, an accessory before the fact or a principal in the second degree would be ousted of clergy: but, on the other hand, there seems little doubt that the principal, stealing in a shop or warehouse, not being an out house, and who would not be within the 39 Eliz. would be ousted, because when an act deprives accessories of clergy, it is construed to do so to principals, as the guilt of the former is derivative and inferior, but the converse of the proposition does not prevail, Fost. 330 to 337. Under both the statutes of Elizabeth and William, a breaking is essential; for, though not mentined in the enacting clause of the former, it is expressly named in the preamble, 1 Hale, 526, 7. But such a breaking as would constitute burglary, if done in the night will, suffice, and, indeed, less; for if a man enter through open doors, and afterwards break open a drawer attached to the freehold, the offence will be capital, 1 Hale, 526. There must be an actual stealing, though the goods need not be removed from the premises, but, if spread on the ground, or taken from their places, the offence will be complete, id. ibid. Before the statute of William, no person was ousted of clergy but the party actually in *the house*, and if another stood on the outside assisting, though a principal in larceny at common law, his offence was not capital, 1 Hale, 526. But now, by the latter act, all aiders and accessories are excluded, and consequently,\* the entrance of one of the party is sufficient to implicate the whole, 2 Leach 567.

[\*942]



As these regulations apply only to larceny to the amount of *five shillings* after a *breaking*, the 10 and 11 W. III. c. 23. affixes a similar penalty to stealing with secrecy and fraud: it enacts, that "every person who by night or day, shall in any shop, warehouse, coach house, or stable, *privately* and feloniously steal any goods, wares, or merchandizes, being of the value of five shillings or more, though such shop, &c. be not actually broken open by such offender, and though the owners of such goods or any other person be not in such shop, &c. to be put in fear, or shall assist, hire, or command any person to commit such offence, being thereof convicted or attainted by verdict or confession, or being indicted thereof, shall stand mute, or not directly answer, or peremptorily challenge more than 20, shall be guilty of felony without benefit of clergy:" this act is defective in omitting to mention outlaws. By the term "warehouse," places where goods are deposited till they are sent away, without any view to sale, are not included; for it is holden, that the legislature meant only to protect goods when exposed in order to be sold, 1 Leach, 287. Fost. 77. It also applies to no other goods than those of the owner of the place from whence they are stolen; and, therefore, a watch left to be repaired, is not within its meaning, 1 Leach, 334. 8 Mod. 165. The property must also be intended for the purposes of sale, and not merely for safe custody, *id. ibid.* On the same principle, goods stolen from stables and coach houses must be the usual and proper furniture of such places, and it seems that a coachman's livery great coat does not come within this description, 1 Leach, 304. Money, though sometimes included in the term *goods*, is not within this act, as that word being joined with "wares and merchandize," seems restricted to a similar meaning, Fost. 79. And if any force be used, as if the shop be entered with a false key or picklock, the idea of *privately* stealing will be done away, and recourse must be had to other provisions, Fost. 79.; but when it is uncertain whether any violence were used or not, the defendant may be convicted, 2 East, P. C. 642.

All larcenies committed in churches are ousted of clergy, by 1 Edw. VI. c. 12. s. 10.; a privilege which offenders possessed at common law, unless the ordinary refused to grant it; but accessories are not, at the present day, excluded, because the 23 Hen. VIII. c. 1. is repealed, except it amount to burglary, 2 Hale, 365.—By 1 Edw. VI. c. 12. s. 10. "No person who shall be in due form of law, attainted or convicted of breaking of any house by day or by night, any person being there in the same house where the\* same breaking shall be committed, and thereby put in fear or dread," shall be admitted to clergy. There must be

Stealing to the value of twelve pence.

[\*943]

a breaking to constitute an offence under this act, an actual stealing, and a person within put in fear. The 4 & 5 P. & M. c. 4. ousts all accessaries before the fact of clergy; and, by implication therefore, all principals in the second degree, Fost. 330. But the statute of Edward is now rendered useless, as the 3 & 4 W. & M. c. 9. s. 1. is more extensive. It takes away clergy from all who "shall feloniously take away any goods or chattels being in any dwelling house, the owner or any other person being therein and put in fear; or shall rob any dwelling house in the day time, any person being therein; or shall comfort, aid, abet, assist, counsel, hire or command any person or persons to commit any of the said offences:" there is no occasion, therefore, under this act, for any breaking to be effected, in which point, and its application to accessaries and abettors, it chiefly differs from the former. It seems on the whole, that the value of the property taken must exceed *twelve pence*, as the act does not create a new felony, but takes away clergy from an old one, and there is no occasion to pray this benefit in cases of petit larceny, see 2 East, P. C. 633, 4. It seems to be the better opinion that some one within the house must be put in actual terror, and that not merely the constructive fear which in case of highway robbery is implied from danger, 11 Co. 37. b. 2 East, P. C. 634, 5. However, this circumstance of putting in fear is not necessary under this act, where there is a *breaking*; for the clause "or shall *rob* any dwelling house in the day time, any person being therein," is independent of the other, and makes no mention of alarm; it includes, however, the idea of breaking under the term *rob*, which always supposes violence. It is sufficient if the door of an inner room be broken to effect the theft, but the forcing a chest or fixed counter will not suffice, 1 Hale, 523, 6, 7, 8. Fost. 108.: it must be such a breaking as would amount to burglary, if it were not nocturnal, 1 Hale, 522. Under this act also, the value must be above twelve pence, to deprive the offender of his clergy, 1 Hale, 531.

The 5 & 6 Edw. VI. c. 9. enacts, that "no person who shall be found guilty of and for robbing any person or persons in any booth or tent in any fair or market, the owner, his wife, his children, or servants or servant, then being within the same booth or tent, shall be admitted to clergy, whether the owner or dweller of such booths or tents, his wife, children or servants being in the same at the time of such robberies and felonies committed, shall be sleeping or waking:" but it does not seem that the 4 & 5 Ph. & M. c. 4. brings accessaries before the fact under the same provision,\*

[\*944] except in case of robbery from the person, which is provided for by other statutes.

The case of nocturnal breaking into dwelling houses, will be considered under its appropriate title of Burglary.

Larceny is aggravated not only by the character of the offender, the nature of the property, and the place where it is committed, but in the fact of its being taken *from the person of the owner*. Of this taking there are two descriptions—a taking privily, and a taking by violence, which last is denominated Robbery.

Stealing  
from the  
person.

I. *Privily*. The offence of stealing *privily* from the person was made capital by 8 Eliz. c. 4. which enacts, “that no person which hereafter shall happen to be indicted or appealed for felonious taking of any money, goods or chattels from the person of any other privily, without his knowledge in any place whatsoever,” and thereupon found guilty by verdict of twelve men, or shall confess the same upon his arraignment, or stand mute, challenge peremptorily, more than 20, or be outlawed, shall be admitted to clergy: the taking against which the statute was intended to operate, was from the person *privily*, and without the knowledge of the owner. But the discussion of these circumstances is rendered unnecessary by 48 Geo. III. c. 129. which repeals the statute of Elizabeth, and enacts in its room “that every person who shall, at any time or at any place whatsoever, feloniously steal any money, goods or chattels, from the person of any other, whether privily or without his knowledge or not, but without such force or putting in fear as is sufficient to constitute the crime of robbery, or who shall be present, aiding or abetting therein, shall be transported for seven years, or imprisoned for three years, at the discretion of the court in which he is convicted.” But this act does not in any way, alter the crime of robbery; it merely lessens the punishment of a description of larceny which before was capital, 2 Leach, 1046.

II. The other kind of larceny from the person is forcible, and is called *Robbery*. But as this offence derives its peculiar atrocity from the violence and terror with which it is attended, it has been classed among personal injuries, see ante 802 to 809.

## INDICTMENT.

As to the *Venue*. As the property in the goods stolen always remains in the true owner, unaltered by the tortious caption, every asportation\* is in law a new trespass. Hence it follows that the venue may be laid in any county into which they are conveyed; as the offence of taking and converting

Indict-  
ment for  
larceny.  
[\*945]

is there, in itself, complete, \*1 Hale, 507, 8. Hawk. b. 1. c. 33. s. 52. ante 1 vol. 178, 9. But this it is said will not be the case, when it is such a taking of which the common law will not take cognizance; as if goods are taken on the high seas, until the offence is made indictable here by some particular statute, Hawk. b. 1. c. 33. s. 52. ante 1 vol. 178. And, as it was holden that a felon could not be indicted in England who had stolen goods in Scotland, though taken with them in the latter, (ante 1 vol. 178.) the 13 Geo. III. c. 31. s. 4. enacts, "that if any person having stolen or otherwise feloniously taken money, cattle, goods or other effects, in either part of the united kingdom, shall afterwards have them in his possession in another part, he may be indicted in the latter, as if he had committed the original felony there." As this was previous to the union with Ireland, it did not extend to that country; but afterwards the 44 Geo. III. c. 92. s. 7. effected a similar regulation, which embraced it also as a part of the united kingdom. In the case of plundering wrecks, if the offence be committed in Wales, the trial must take place in the county of England next adjoining the borders, 26 Geo. II. c. 19. s. 8.: in the construction of this act, where the offence was committed in Anglesea, Salop and not Chester is taken to be the nearest English county, as the king's writ does not run into the latter county, which was anciently regarded as a part of Wales, 1 Leach, 108. ante 1 vol. 182. The same statute, in order in every case to secure an impartial trial, even where the theft is committed in a county of England, permits though it does not compel the prosecutor to prefer his charge in the county next adjoining; as to the venue in general, see ante 1 vol. 178. &c.

In general, when clergy is taken away from larceny, in consequence of some peculiar circumstances, all those circumstances must be proved to have taken place within the county where the venue is laid; or sentence of death cannot be given; on the same principle, that if a person be tried in one county where part of goods taken in another, are found in his custody, he can only be convicted to the amount of the property in his possession, 1 Hale, 536. But to this rule the 25 Hen. VIII. c. 3. revived and confirmed by 5 and 6 Ewd. VI. c. 10. furnishes an exception; by that statute it is enacted, "that if any person be indicted of felony for stealing any goods or chattels in any county within the realm of England, and thereupon arraigned and found guilty, or stand mute of malice, or challenge peremptorily above the number of twenty persons, or will not upon his said arraignment answer directly\* to the same felony, that then the same person so arraigned and found guilty, or who stand mute of malice, or challenge peremptorily above the number of twenty persons, or

will not directly answer to the law, shall lose and be put from the benefit of clergy, in like manner and form as they should have been if they had been indicted and arraigned and found guilty in the same county where the same robbery or burglary was done or committed; if it shall appear to the justices before whom any such felons or robbers be arraigned by evidence given before them or by examination that the same felonies whereupon they be so arraigned, had been such robberies or burglaries in the same shire where such robberies or burglaries were committed or done, by reason whereof they should have lost the benefit of their clergy by force of the said statute, in case they had been found guilty thereof in the same shire where such robberies or burglaries were so committed or done." This act did not extend to outlaws, or offences committed beyond the realm of England, Hawk. b. 2. c. 33. s. 81. But by 3 W. and M. c. 9. s. 3. "if any person indicted of felony for stealing of any goods or chattels in any county of England, Wales, or town of Berwick upon Tweed, and thereof be convicted or attainted, &c. he shall be excluded from the benefit of clergy, if it appear upon evidence or examination before the justices that the goods or chattels were taken by robbery or burglary, or in any other manner in any county, whereof if such person had been convicted by a jury of the said other county, he or they are excluded by virtue of this or any other act, from having the benefit of clergy." Under these acts, there can be no doubt that the offender must be taken with the goods in the county where he is tried, as otherwise he can have no occasion to claim, and therefore, receive no injury from the denial of clergy. Neither of them extend to accessaries, nor to any felonies subsequently created, or from which clergy has been since taken away. These words, "if it shall appear in evidence before the justices," are to be intended where the party pleads the general issue and is found guilty by verdict; and these "if it shall appear on examination, &c." apply where he stands mute, challenges more than twenty without shewing cause, is outlawed, refuses to answer directly, or confesses, Hawk. b. 2. c. 33. s. 82. acc. 1 Hale, 518. cont. : and it is agreed that there is no occasion to state, at all, in the proceedings, that it appears by evidence or examination that the felony was committed in a different county, and was a crime excluded from clergy, 1 Hale, 518. Hawk. b. 2. c. 33. s. 82. It is also certain that if the felony be such as the offender at common law does not require the benefit of clergy, this act will not alter the judgment to be passed\* against him, 1 Hale, 536. Hawk. b. 2. c. 33. s. 83. [\*947] It seems also that if a robbery be committed in one county, and the defendant be taken with the goods in another, but there be no other evidence of his having committed the rob-

bery than this fact, he will be admitted to his clergy, 2 East P. C. 776.

The *name and addition of the defendant* are to be stated as in other indictments, see 1 vol. 202 to 211.

*Description of the property stolen.* The *kind* of property stolen must be accurately stated in the proceedings; and it will not suffice to term it goods and chattels without a more particular description. So if a defendant be indicted for stealing sheep, and it appear to be a lamb, it is said he must be acquitted. 4. Bla. Com. 240. n. 13. Christ. ed. 2 Hale, 182, 3. ante 1 vol. 235, 6. But an indictment for stealing bank notes is good, if it merely describe them as much as such without setting them forth; or they may be described "promissory notes, called bank notes," or "promissory notes called bank post bills," according to the fact. So a promissory note may be generally described as "a promissory note for the payment of five guineas," and if its purport be set forth, it will be bad, unless it follows the description of the statute, making it felony to steal it, 1 Leach, 253, 513. 2 Leach, 1103. and in notis. Care should be taken on the record, that the property charged as stolen was the subject of larceny. Thus, if it consists in animals, in themselves *feræ naturæ*, it should expressly state them to be reclaimed, tamed, or dead, in which state they become the subjects of individual property. It has also been resolved, that where the property is of a nature to warrant that description, it should, in addition to the statement of this kind, be termed "the goods and chattels" of the owner, and without these or equivalent words, the indictment will be defective. Cro. Eliz. 490. On the same principle, it should be averred to be "of the monies," "of the cattle," &c. when those terms apply. Certain it is, that if these words be unnecessary, they may be rejected as surplusage, and therefore, it is both safe and prudent to insert them. 1 Leach, 468. The *number* of the things stolen should also appear, because, not only is this part of the legal description, but the prosecutor cannot, in strictness, claim restitution of any other goods than those stated on the record. 2 Hale, 182. ante 1 vol. 235. And where the things stolen are of different kinds, the quantity of each kind must be stated distinctly; and, if the indictment allege that the defendant took twenty sheep, ewes, and lambs, it will be bad, though twenty sheep generally might, it is said, have been good, without making any inferior distinction. 2. Hale, 183. But, in general, it is not necessary to prove in evidence, the precise number,\* if laid under a *scilicet*; though it has been holden necessary in an indictment for embezzlement, to state the exact sum converted to the use of the offender. 2 Hale, but see ante 1 vol. 227. The *value* of the property must also be

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expressed, in order that it may appear on the face of the record, whether the offence is grand or petit larceny, and where the property is of different kinds, the value of each should be inserted, 2 Hale, 182, 3.

*Description of the owner.* Wherever the owner of goods is known, the property must be expressly laid in him, 1 Hale, 512. 2 Leach. 578. 3 Camp. 265. in notis. ante 1 vol. 212, 3, 4. A special property in them is sufficient for this purpose, and, therefore, a carrier, lessee for years, or a party to whom goods are pawned or bailed, may be described as owners, or they may be laid as the property of the person who is beneficially interested in them, 1 Hale, 512. So goods stolen from a laundress, who has them in charge to wash them, may be safely described as hers, because she is answerable for them to her employers, 1 Leach, 357. in notis. Goods purloined from an inn, may be well laid as belonging to the inn keeper, or the guest who has put them under his protection, id. ibid. Where a man has cattle to agist, which are taken from his custody, the property may be laid in him, because he may maintain trespass, id. ibid. 2 Rol. Abr. 551. If a coach be standing in the yard of a coach maker to be repaired, and a plate glass and hammer cloth be stolen from it, the property may be well laid in the owner of the premises, 1 Leach, 356. And where a parcel is stolen from a stage coach, the property may be well laid in the driver, though he be no proprietor either of the goods or the coach; because, though as against his employers he has only a bare charge, as against all the rest of the world he has the legal possession, 2 Leach, 862. But if the party alleged to be owner, has neither the property nor the legal possession, as where goods are stolen from a *feme covert*, or a servant holding them for his master, the defendant must be acquitted; when another indictment, rectifying the mistake may immediately be preferred against him, 1 Hale, 513. as to these points see ante 1 vol. 212 to 217. 2 Saund. 47. a. n. 1. Clothes and necessities provided for children, may be well described as belonging either to them or to the father. 1 Leach, 464. in notis: but if the clothes be furnished by a father to a son who is bound apprentice to him, in pursuance of indentures in which he covenants to clothe him, in return for his service, the property must be laid in the son, or the indictment will be defective, 1 Leach, 463. A corpse is the property of no one, and, therefore it is no felony to steal it, though it is a high misdemeanor against morality and decorum and as\* such has been already considered. 2 T. R. 733. ante 2 vol. 35. But it is larceny to steal a shroud or coffin, and they may be well laid to belong to the personal representatives of the deceased, though not to the deceased himself,

who can no longer possess any thing, 1 Hale, 515. 12 Co. 112. 2 Hale, 181. ante 1 vol. 214. If the personal representatives of the deceased cannot be found, or from the lapse of time it cannot be discovered, whose body was inclosed in the coffin, it may be laid as the property of some one unknown, but cannot be said to belong to the churchwardens, 2 East, P. C. 652. If goods be stolen from a person who has them as executor, they may either be described as the goods of the testator, in the custody of his personal representative as such, or as the property of the latter, without advertent to the capacity in which he held them, 1 Hale, 181. 2 Saund. 47. a. n. 1. as to trover. If the goods of an intestate be stolen before administration is granted, the property should be laid in the ordinary; if an executor be appointed in a will, they shall be laid to be his, though before probate; for in both these cases, without determining any question of property, the parties have the legal possession; their title, therefore, need not appear, but they may be described generally as owners, 1 Hale, 514. If a man steal lead or other effects from a church, there is no occasion to lay the property in any one, but it may be laid in the rector or vicar, 2 East, P. C. 651. ante 1 vol. 214. And if the theft be effected in time of vacancy, the offender may be indicted for stealing the goods of the chapel, in the custody of those who have the care of them; or if the place be a parish church, the property may be laid in the parishioners at large, 1 Hale, 512, 3 Campb. 264, 5. Hawk. b. 1. c. 33. s. 45. ante 1 vol. 214.

Where the proprietor cannot be ascertained, an indictment laying the goods to be the property of a certain person unknown, will be valid, Keilw. 25. 2 Hale, 181. and ante 1 vol. 212. In this case, they will be forfeited to the crown on the conviction of the offender. But if the owner is known, such an allegation will be improper, and on the discovery of his name on the trial, the prisoner must be acquitted. 2 Campb. 264, 5. ante 1 vol. 212. So in indictments for stealing in dwelling house, or from lodgings, the name of the owner of the premises, if known, should be truly inserted. 1 Leach, 89. 21. 78. 9. 237. 252. 336. 338. 545. 2 Leach, 774. 2 Hale, 244. ante 1 vol. 213.

[\*950] In stating the name of the owner, it is not necessary to give any addition, as the statute of additions extends only to the defendant. 2 Leach, 861. 2 Hale, 182. though it may be sometimes proper for the purposes of distinction. And it will suffice, if the name is\* used by which the party is commonly known. Thus where the goods stolen were laid to be the property of Victory, Baroness Turkein, by which title she was always addressed, though her real name was Salina Victorie, the indictment was held valid, 2 Leach, 861. As to

the description of the prosecutor in general, see 1 vol. 215, 6, 7.

*The taking and asportation* must both be expressly shown. For this purpose the term *cepit* was essential when the proceedings were in Latin, and the word *took* is as necessary now, 1 Hale, 504, 8. 2 Hale, 184. If, therefore, it be merely *abduxit* or *led away*, no larceny will be charged; for the defendant, for any thing which appears on the record, might lawfully have obtained possession, 2 Hale, 184. Words of asportation are equally requisite. In case of goods or chattels, the old terms were *cepit et asportavit*, of cattle. *cepit et effugavit*, of a horse, *cepit et abduxit*, 1 Hale, 504. The words *feloniously* and *stole* are also necessary in order to fix the party with a criminal intention, id. ibid. Without these a trespass only would be charged, and the defendant must be acquitted.

The indictment usually concludes to the damage of the owner, and against the peace of his majesty. In these and other respects not particularly noticed, it resembles indictments for other felonies. See vol, c. 5. Where the proceedings vary under circumstances of aggravation, or where a statute takes away clergy, the particulars will be found noticed in the notes to the precedents, to which they immediately apply. There is no distinction between an indictment for grand or petit larceny, except the value of the property, 2 Stra. 1134.

*Trial, &c.* On the trial, the defendant may be acquitted of Trial, &c. all aggravations, as stealing in a dwelling house, robbery, &c. and found guilty of a single felony; and on an indictment for grand, may be convicted of petit larceny. Com. Rep. 478. R. T. H. 115. Cas. K. B. 165. But on an indictment for robbery from the person, if the jury find a special verdict, stating facts which amount to larceny, but merely put it to the court to say whether the prisoner is guilty of the felony and robbery charged upon him, and the judges are of opinion that he is not, they cannot pass sentence as for the simple stealing; though prisoners may, however, be detained to be more correctly indicted. R. T. H. 113. And if the evidence does not prove a felony, no judgment can be given as for a trespass; for, though sometimes mentioned in the old books, it is no offence of which the law now will take cognizance.

The *punishment* of larceny, in its various degrees, has been necessarily considered in the examination of the crime. The *restitution*\* of *stolen goods* will be found considered, 1 vol. 817 to 821. Parties convicted of petit larceny, were formerly disqualified from giving evidence, Willes, 665. 2

The punishment of larceny.  
[\*951]

Wills. 18. But by 31 Geo. III. c. 35. they are made competent witnesses.

## ACCESSARIES AND RECEIVERS OF STOLEN GOODS.

The offence.

In grand larceny there are accessaries before and after the fact as in other felonies. Thus, a man may be accessory before the fact in stealing his own goods if he procure another to do so with a felonious design. Cro. Eliz. 537. and accessory after if he receives the felon and assists him to escape. Fost. 123. In this offence at common law, those present aiding and abetting, are principals in the second degree; though it is otherwise under some of the statutes which take away clergy, and which are not construed to extend to accessaries or abettors, unless they expressly name them. In petit larceny there can be no accessaries; those who procure, aid or advise, are principals; and those who merely assist the felon's escape, are not, at common law, regarded as criminal, 1 Hale, 530, 616. nor at common law, did knowingly receiving stolen goods make a man accessory, unless he harboured or assisted the original offender. This offence was only a misdemeanour, and could not be punished with any severity adequate to its mischievous effects. It has, therefore, been made the subject of several legislative provisions which we will briefly consider.

The 4 and 5 W. and M. c. 9. s. 4. enacts that if any person shall buy or receive any goods or chattels that shall be feloniously taken or stolen from any other person knowing the same to be stolen, he shall be taken and deemed an accessory to such felony after the fact, and shall incur the penalties which attach to offenders in that degree. After this act, no indictment as for a misdemeanour at common law, could be supported. 1 Ld. Raym. 711, 2. This act, it will be observed, merely makes the receivers of goods accessaries as the receivers of felons were before; it creates no new offence; and therefore, the persons against whom it was directed merely became accessaries as at common law and could not be punished in case of the principal's escape; but the 1 Ann. st. 2. c. 9. s. 2. reciting this inconvenience provides, "that it shall be lawful to prosecute and punish every such person buying or receiving any stolen goods knowing the same to be stolen *as for a misdemeanour*\* to be punished by fine and imprisonment, although the principal felon be not before convicted of the said felony, which shall exempt the offender from being punished as accessory, if the principal

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shall be afterwards convicted. The statute 5. Ann, c. 33. s. 5. soon afterwards enacted "that if any person shall receive or buy any goods or chattels that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, or shall receive, harbour or conceal, any burglars, felons or thieves, knowing them to be so, shall be taken and received *as accessory to the said felony* or felonies, and being of either of the said offences legally convicted, by the testimony of one or more credible witnesses, shall suffer and incur the pains of death *as a felon convict.*" This cause, like the 4 and 5 W. and M. can only be of use when the original felon is convicted; but the section provides "that if any such principal felon cannot be taken so as to be prosecuted and convicted for any such offence, yet nevertheless it shall and may be lawful to prosecute and punish any such person buying or receiving any goods stolen by any such principal felon, knowing the same to be stolen, *as for a misdemeanour*, to be punished with fine and imprisonment, or such other corporal punishment as the court shall think fit to inflict, although the principal felon be not before convict of the said felony, which shall exempt the offender from being punished as accessory, if such principal felon shall be afterwards taken and convicted." And by 4 Geo. I. c. 11. persons convicted of receiving or buying stolen goods, knowing them to be stolen, may be transported for fourteen years. But offenders of this class, notwithstanding the act, may pray the benefit of clergy, and thus receive sentence only for the penalties consequent on its allowance. 2 East, P. C. 744. And this act can only mean persons legally convicted as accessaries under 3 and 4 W. and M. c. 9. and 5 Ann, c. 31. so that to warrant any judgment under it the principal must be first convicted; and the offence must be such as at common law, admits of accessaries after; and therefore, if the principal be convicted of petit larceny only, the verdict finding the accessory guilty under this act is of no effect, and no judgment can be given against him. Fost. 73. Neither does the punishment mentioned in it extend to cases where the principal felon is not convicted and the receiver is found guilty of a misdemeanour under 1 Ann. Sess. 2. c. 9. when fine, imprisonment, and corporal punishment, are prescribed. In the construction of these statutes it has been resolved that where the principal has been convicted, the misdemeanour is merged in the felony, and the prosecutor cannot indict for the former at his option, 2 East, P. C. 746. and even when the principal is not found guilty but in custody and amenable to justice, this course\* was formerly illegal. Fost. 373, 4. acc. 2 Ld. Raym. 1370. But the accessory might be tried for the misdemeanour though the principal might have been brought to justice. 1

[\*953]

Leach, 103. And now the 22 Geo. III. c. 58. enacts, "that in all cases whatsoever, where any goods or chattels (except lead, iron, copper, brass, bell-metal and solder) shall have been feloniously taken or stolen, whether the offence of the principal shall amount to grand larceny, or some greater offence, or to petit larceny only; (except where the person or persons actually committing the felony shall have been already convicted of grand larceny or of some greater offence) every person who shall buy or receive any such goods or chattels, knowing the same to have been so taken or stolen, shall be deemed guilty of and may be prosecuted *for a misdemeanour* and shall be punished by fine, imprisonment, or whipping, as the court of quarter session, who are hereby empowered to try such offender, or as any other court before whom he shall be tried, shall think fit, although the principal felon be not before convicted of the said felony and whether he is amenable to justice or not. And in cases where the felony actually committed shall amount to grand larceny or some greater offence, and where the person or persons actually committing such felony shall not be before convicted, such offender shall be exempted from being punished as accessory if such principal felon shall be afterwards convicted." The metals excepted in this act are specially provided for by 29 Geo. II. c. 30. which enacts that "every person who shall buy or receive any lead, iron, copper, brass, bell-metal, or solder, knowing the same to be unlawfully come by, or shall privately buy or receive any stolen lead, &c. by suffering any door, window or shutter to be left open or unfastened from sun-setting to sun-rising for that purpose, or shall buy or receive the same or any of them at any time in any clandestine manner from any person or persons whatsoever shall, being thereof convicted by due course of law, although the principal felon has not been convicted of stealing the same, be transported for fourteen years according to the laws in force for the transportation of felons."

In the construction of the former statutes of William and Ann, it has been holden that money is not included in the terms "goods and chattels," and, therefore, the receivers of coin are not within their meaning. 1 Leach, 241. It has also been holden that to receive bank notes is not an offence against which they can operate; though some of the judges strongly dissented from this opinion, thinking that as the 2 Geo. II. c. 25. made it a felony to steal bank notes, like other effects of the same value, the receivers of them were placed in the same condition with the receivers of goods and chattels,\*

[\*954] 1 Leach, 468. and 472 in notis. This decision seems also to be shaken by several cases in which bank notes have been holden to be within 12 Ann, c. 7. which makes the stealing of



any money, goods or chattels, wares or merchandizes, in a dwelling-house, a capital offence. 2 Leach, 693, 564, 572, 640.

The legislature have also on various occasions thought fit to pass laws against those who receive particular kinds of property. Thus, we have seen by 29 Geo. II. c. 30. certain metals are protected. The 21 Geo. III. c. 69. subjects persons buying or receiving "any pewter pot or other vessel, or any pewter in any form or shape whatever, knowing the same to be stolen or unlawfully come by;" or effecting the same purpose "by suffering any door, window or shutter, to be left open or unfastened from sun-setting to sun-rising for that purpose," though the principal felon be not convicted, to be transported as *other felons* for seven years, or to be kept in prison to hard labour from one year to three, and, if the court think fit, publicly whipped not exceeding three times during that period. The "buying or receiving any part of the cargo or loading, or any goods, stores or thing, of or belonging to any ship or vessel in the river Thames, knowing the same to be stolen or unlawfully come by," is, by 2 Geo. III. c. 28. punished with fourteen years transportation, though the principal offender has not been convicted. Under the first of these acts it is usual to indict for a misdemeanour only; the offence under the second has been holden to amount to felony. 2 T. R. 77. But the legislature seem to have considered it as a misdemeanour only by the 39 and 4 Geo. III. c. 87. s. 22. which recites that "Whereas by 2 Geo. III. c. 28. persons guilty of certain offences are punishable by transportation for fourteen years, but the said offences not being by the said act declared to be felony, the trial thereof may in all cases be put off by means of a traverse to the next sessions after the finding of the bill of indictment for the same and the offender, be in the mean time bailed, whereby justice has been in many instances eluded," and then for remedy of this evil enacts "that whenever any indictment shall be found against any person for any of the said offences, the person so indicted shall plead to the said indictment without having time to traverse the same, as is usual in cases of misdemeanours." The 10 Geo. III. c. 48. enacts that "every person who shall buy or receive any stolen jewel, or any stolen gold or silver plate, watch or watches, knowing the same to have been stolen, shall, in all cases where such jewel or gold or silver plate shall have been feloniously stolen, accompanied with a burglary actually committed in the stealing the same, or shall have been feloniously taken by a robbery on the highway be triable as well before conviction of the principal felon\* in such felony or burglary and robbery, *whether he shall be in or out of custody*, as after his conviction." "And if any person so buying or receiving such jewel or gold or silver plate, shall be convicted thereof, he shall be adjudged

guilty of felony and transported for fourteen years." A seal of cornelian set in gold, is a jewel within the meaning of this statute ; but as *watches* are not mentioned in the clause which creates the felony and directs the punishment, it seems doubtful whether they come within it so as to receive any peculiar protection. 1 East, P. C. 754. Receivers are included in several of the statutes respecting particular kinds of property ; but as the effect of those acts has been already stated, it need not be repeated here.

The case of persons having naval or military stores in possession, has been the object of particular attention on the part of the legislature. Thus the 9 & 10 W. III. c. 41. which we have seen prohibits the making of stores, (a) in the second section directs, "that such person in whose custody, possession, or keeping, such goods or stores marked as therein mentioned, (a) shall be found, not being employed as therein mentioned, (a) and such person who shall conceal such goods or stores marked as aforesaid, being indicted and convicted of such concealment, or of the having such goods found in his custody, possession, or keeping, shall forfeit such goods, and the sum of 200*l.* together with the costs of prosecution, one moiety to his majesty and the other moiety to the informer, to be recovered as aforesaid, and shall also suffer imprisonment until payment and performance of the said forfeiture, unless such person shall, upon his trial, produce a certificate under the hand of three or more of his majesty's principal officers or commissioners of the navy, ordnance, or victuallers, expressing the numbers, quantities, or weights of such goods as he shall then be indicted for, and the occasion and reason of such goods coming to his hands or possession." The 1 Geo. I. st. 2. c. 25. s. 3. gives power to any one of the principal officers and commissioners of the navy to enquire, empower persons to search by warrant, for stores, and to punish the offenders by fine not exceeding twenty shillings, and imprisonment for a week ; and, on non-payment of the fine, to imprison him till payment, or send him to the nearest house of correction to be kept for two months to hard labour : and if the offence seemed to require a punishment more severe, to send him to the next gaol, or detain him in the custody of the messenger till he enter into recognizance, proportioned to the magnitude of the charge, to appear and answer in any court where the king shall prosecute him within\* a year next following. The 9 Geo. I. c. 8. revives the last act, and makes it perpetual, extends the former provisions to "timber, thick stuff, or plank, marked with the broad arrow, by stamp, brand or otherwise;" and s. 4.

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(a) See ante 934.

enacts, " that it shall and may be lawful to and for any judge, justice, or justices, before whom any offender shall be convicted of any of the crimes or offences before recited (i. e. the offences referred to in the former statutes) enacted or mentioned in this act, (i. e. the concealing and having in possession timber, &c.) to mitigate the penalty for the same as he or they shall see cause, and to commit the offender so convicted to the common gaol of the county or place where the offence shall be committed, there to remain without bail or main-prize until payment be made of the penalty and forfeiture imposed by this or the said former act, or mitigated as aforesaid, or to punish such offender corporally by causing him to be publicly whipped, or committed to some public workhouse, there to be kept to hard labour for the space of six months or a less time, as to such judge, justice, or justices, in his or their discretion shall seem meet." Some doubts having arisen respecting the mode of trial under these acts, the 17 Geo. II. c. 40. s. 10. after reciting all the former provisions, enacts, " that it shall and may be lawful to and for any judge, justice, or justices at the assizes, or justices of the peace at the general quarter sessions, to be holden for any county, city, borough, or town corporate, to hear, try, or determine, by indictment or otherwise, all or any of the crimes or offences mentioned in the said recited acts : and that the said judge, justice, or justices of assize, or justices of peace as aforesaid, before whom such offender shall be indicted, or tried and convicted of all or any of the crimes or offences in the said recited acts mentioned, may impose any fine not exceeding the sum of two hundred pounds, on such offender, one moiety to be paid to his majesty, and the other moiety to the informer ; and may mitigate the said penalty and forfeitures inflicted by the said recited acts, or either of them, and to commit the offender so convicted and fined, to the common gaol of the county or place where the offence shall be committed, there to remain without bail or mainprize, until payment be made of the penalty and forfeitures imposed by this or the said former acts, or mitigated as sforesaid ; or in lieu thereof to punish such offender in the premises corporally, by causing him to be publicly whipped, and committed to some house of correction or public workhouse, there to be kept to hard labour for the space of three months or less time, as to such judge, &c. shall in his or their discretion seem meet." And the 39 & 40 Geo. III. c. 89. s. 1. reciting all the former acts, and that notwithstanding the penalties inflicted\* by them, the offences had increased which they were intended to prevent, proceeds to enact, " that every person (not being a contractor, or employed as mentioned in 9 & 10 W. III.) who shall willingly or knowingly sell or de-

[\*957]

liver, or cause or procure to be sold or delivered to any person whomsoever, or who shall willingly or knowingly receive or have in his custody possession or keeping, any stores of war, or naval, ordnance or victualling stores, or any goods whatsoever marked as in the said recited acts are expressed, or any canvass marked either with a blue streak in the middle, or with a blue streak in a serpentine form, or any bewper otherwise called buntin, wrought with one or more streaks of raised tape (the said stores of war, or naval, ordnance or victualling stores or goods above mentioned, or any of them being in a raw or unconverted state, or being new or not more than one third worn,) and such person who shall conceal such goods, or any of them marked as aforesaid, *shall be deemed receivers of stolen goods knowing them to be stolen*, and shall, on being convicted thereof in due form of law, be transported beyond the seas for the term of fourteen years, in like manner as other receivers of stolen goods are directed to be transported by the laws of this realm, unless such person shall upon his trial produce a certificate under the hands of three or more of his majesty's principal officers or commissioners of the navy, ordnance or victualling, expressing the numbers, quantities or weights, of such stores or goods as he shall then be indicted for, and the occasion and reason of such stores or goods coming to his hands or possession." The second section directs, that persons in whose custody naval stores, &c. shall be found, and all who are convicted of any offence contrary to 8 & 9 W. III. shall, besides forfeiting the stores, 200*l.* and the costs, be corporally punished by pillory, whipping and imprisonment, or otherwise, at the discretion of the court; but they are still left at liberty to mitigate the stated penalty. The third section provides, that contractors shall have no exemption except for stores *bona fide* made up, and not yet delivered to the proper officers. The fourth section makes the defacing of marks on stores, a single felony. The fifth section makes a second offence under this act, or 9 & 10 W. III. punishable with transportation for fourteen years: and the sixth makes a return from any transportation under this statute, felony without benefit of clergy. But the transportation may always be mitigated into corporal punishment at the discretion of the court in which the offender is convicted.

[\*958] These acts, it will be observed, are all in the disjunctive, "receive *or* buy," "receive *or* have in possession." It is not necessary, therefore, that the defendant should have purchased the goods in\* order to make his offence complete; nor indeed, is it essential to the crime that he should have an interest in them; it will suffice if he received them merely to assist and skreen the original offender, 2 East, P. C. 876.

There seemed indeed, to be some doubt, whether, if the jury found a having in possession, but not a receiving, the prisoner would come within 39 and 40 Geo. III. but the majority of the judges thought in the affirmative, 2 East P. C. 767; and on the general principles by which disjunctive statutes are construed, it seems difficult to conceive how the doubt could have arisen. By the statutes, the king's mark on the stores is presumptive evidence of ownership: it fixes the party with the offence of unlawfully having possession, unless he can produce the certificate from the commissioners, of the occasion which renders it legal: but by an equitable construction of the provisions, it is holden that if the defendant can shew he had no evil design, but that the possession was really innocent, though he cannot excuse himself by the means prescribed he will be acquitted. Thus where a widow was indicted for having naval stores which had been wrought into table linen, and it was shewn that her husband had bought them many years ago at a public sale, that at his death they came by act of law to her, and that she had always used them openly and without disguise, Mr. J. Foster directed the jury to acquit her, Fost. 439.

The offence of taking money to assist the owners to stolen goods, has been considered already as an injury to public justice, ante 218, 9.

*Indictment.* In cases of receiving goods in one part of the kingdom which are stolen in another, there was formerly some difficulty as to the place in which the venue should be laid. But this is entirely removed by 13 Geo. III. c. 31. s. 5. as it respects Scotland and England, which enacts, that the venue shall be laid in the jurisdiction in which the defendant was guilty of receiving, as if the original felony had been committed there. And by 44 Geo. III. c. 92. s. 8. after the union with Ireland, the same rule is laid down where the theft is committed in one of the three parts of the united kingdom, and the receiving takes place in another.

If the principal offender be unknown, the indictment will be good if it so describe him; but wherever he is known, the averment ought to be according to the truth of the facts concerning him, 3 Campb. 264. ; and, therefore, where the principal was described in the indictment as unknown, and his name was inserted on the back of the bill as a witness before the grand jury, the judge directed an acquittal, 3 Campb. 264. The common form of the indictment for receiving stolen goods is to state, first, the fact of stealing\* of them by the principal, and then the receipt of them by the receiver, he then and there well knowing the goods to have been feloniously stolen. There is no occasion to state the time or place to the original stealing, it will

[\*959]

suffice if it be stated to the offence of the receiver, 2 East, P. C. 780. When the defendant is indicted as an accessory to the felony, it is sufficient to state that the principal was duly convicted without proceeding to aver his attainder, 2 Leach, 925. And in indictments on 22 Geo. III. c. 58. for the misdemeanour, it will be unnecessary to allege that the principal has not been convicted; as it is a mere negative averment which the prosecutor could not be called upon to substantiate in evidence, 2 Leach, 578. 5 T. R. 83. The words "*well knowing*," are a sufficient averment that the defendant knew the goods to be stolen, 2 Stra. 904. Com. Dig. Indictment. G. 6. If the indictment state that F. M. received the goods, "he the said T. M. knowing, &c." the words "*he the said T. M.*" in which the name is wrong, may be rejected as surplusage, 1 Leach, 109. When the indictment wants the word *feloniously*, in cases where an indictment for a misdemeanour would lie, it will be held good as for the lesser offence, 2 Sess. Cass. 10. As the mere having naval stores in possession is not an offence at common law, the indictment must conclude *contrary to the form of the statute*, or judgment will be arrested, 2 Ld. Raym. 1104.

The evidence.

*Evidence.* In indictments on the statutes, on which the receiver may be punished, though the original felon is not convicted, the latter may be examined as a witness on the trial, 1 Leach, 418, 9. 2 Leach, 927. in notis. So on 4 Geo. I. c. 11. which makes it capital to take a reward for the purpose of assisting another to stolen goods, the thief may be sworn and give evidence; on which testimony Jonathan Wild was convicted, 1 Leach, 17. in notis. Where the receiver is indicted as accessory, to support the averment that the original felon was duly convicted, it is sufficient to give in evidence an examined copy of the record, shewing that he was guilty of the felony before a court of competent jurisdiction; and this will suffice however informal the proceedings may appear, and however the judgment may be erroneous. It is good against accessory till it be reversed, 3 Campb. 265.: but it is not conclusive; for he may dispute the guilt of the principal, and by shewing his innocence will necessarily establish his own, 1 Leach, 288.

The *Punishment* will be found set forth in the recital of the statutes which regulate the offence.



# INDICTMENTS FOR LARCENY. GENERAL FORMS AGAINST PRINCIPALS AT COM- MON LAW.

Middlesex.\* (b) The jurors for our lord the king, upon their oath present, that A. B. late of, &c. labourer, on, &c. with force and arms, at, &c. aforesaid, one silver spoon, (c) of the value of ten shillings, (d) of the goods and chattels of one J. L., (e) two brass candlesticks, of the value of two shillings, and two linen shirts, of the value of six shillings, of the goods and chattels of one E. W. then and there being found, feloniously (f) did steal, (f) take (g) and carry away, (h) against the peace of our said lord the king, his crown and dignity. [\*960]  
General form of indictment at common law for grand larceny, in stealing the property of different persons.

[Commencement and conclusion as supra] a small quantity of hay, of the value of sixpence, of the goods and chattels of G. W. then and there being found, feloniously, &c. (a)  
For stealing hay.

[Commencement and conclusion as supra] ten sacks of wheat, of the value of twelve pounds, of the goods and chattels of one C. S. then and there being found, feloniously, &c. (i)  
For stealing ten sacks of wheat.

[Commencement and conclusion as supra] ten sacks of wheat meal, of the value of — pounds of the goods and chattels of one C. H. then and there being found, feloniously, &c. (j)  
For stealing ten sacks of wheat meal.

[Commencement and conclusion as supra] thirteen pieces of the current gold coin of this realm called guineas, of the value of thirteen pounds, thirteen shillings, of the monies of the said A. B. in the same dwelling house, then and there being found, feloniously, &c. (k)  
For stealing guineas.

[Commencement\* and conclusion as ante 960.] twenty pounds weight of wool, of the value of ten shillings, of the goods and chattels of one J. C. then and there being found, feloniously, &c. [\*961]  
For stealing wool.  
(l)

(a) See similar precedents, Cro. C. C. 246. Starkie, 426. where several persons' goods are taken at the same time, so that the transaction is the same, the indictment may properly include the whole, but not so if the takings were at different times, ante 1 vol.

(b) As to the venue see ante 944, 5. as to the commencement ante 2 vol, 1, 2, 3.

(c) As to the description of the property stolen see ante 947.

(d) The value must be stated, 2 Hale, 182, 3. as to this statement ante 948. It seems advisable to state the value separately, 2 Hale, 183.

Quere note 2 Starkie, 426. n. c.

(e) This allegation is proper, Cro. Eliz. 490. As to the owner see ante 948. when he is unknown he may be described as "a certain person to the jurors unknown," but not when he is known, 3 Campb. 264.

(f) There terms are necessary, ante 950.

(g) This word is material, 2 Hale, 184. ante 950.

(h) See ante 950. 2 Hale, 184.

(i) 4 Wentw. 43.

(j) 4 Wentw. 44.

(k) 4 Wentw. 2.

(l) See form 1 Leach, 171.

For steal-  
ing silver  
spoons.

[*Commencement and conclusion as ante 960.*] two silver table spoons, of the value of twenty shillings, of the goods and chattels of J. H. then and there being found, then feloniously, &c.

For steal-  
ing arti-  
cles of va-  
rious  
kinds be-  
longing to  
Saint Bar-  
tholomew's  
hospital.  
(m)

That J. A. late of, &c. on, &c. with force and arms, at, &c. aforesaid, one wood-shelf, of the value of—(n) one lanthorn, of the value of—, one tin grater, of the value of—, six crutches, of the value of—, two books of the value of—, one curtain rod, of the value of—, and five linen rollers, of the value of—, of the goods and chattels of the mayor and commonalty and citizens of the city of London, as governors of the house of the poor, commonly called Saint Bartholomew's Hospital, near West Smithfield, London, of the foundation of king Henry the Eighth, then and there being found, feloniously did steal, take, and carry away, against the peace of our said lord the king, his crown and dignity, &c.

For steal-  
ing boxes,  
shoes,  
pocket-  
books, su-  
gar, and  
kettles.

[*Commencement and conclusion as ante 960.*] two boxes of the value of—, twenty-two pair of shoes, of the value of—, four pocket books, of the value of—, one bag, of the value of—, four pounds weight of sugar, of the value of—, two kettles, of the value of—, of the goods and chattels, &c. [*conclude as ante 960.*]

### INDICTMENTS FOR LARCENY. GENERAL FORMS AGAINST PRINCIPALS AND ACCESSARIES.

For re-  
ceiving  
stolen  
goods or  
part  
thereof,  
on 4 and 5  
W. and M.  
c. 9. s. 4.  
(o)  
[\*962]

[*To the end of the Indictment ante 960. against the principal, and then as follows.*] And the jurors aforesaid, upon their oath aforesaid, do further present, that F. M. late of, &c. labourer, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, the goods and chattels aforesaid, (or "one silver watch, being parcel of the goods and chattels aforesaid") so as aforesaid, feloniously stolen, taken and carried, away, feloniously did receive and have, he the said T. M. then and there\* well knowing (p) the said goods and chattels

(m) This indictment was settled by an eminent crown lawyer.

(n) The value should be stated separately, see 2 Hale, 183.

(o) See a similar precedent, 1 Leach, 109. Starkie, 457. As to the offence, indictment, evidence, &c. see ante 951 to 959. See indictments against accessaries in general, ante 2 vol. 5. and the law of ac-

cessaries, 1 vol. 261 to 267. See indictments against receivers of lead, post; and indictments against accessaries before the fact, or by harbouring the principal felon, ante 2 vol. 5, 6.

(p) This is a sufficient allegation of knowledge, 2 Stra. 904. Com. Dig. Indictment G. 6. ante 959.

(*q*) to have been feloniously stolen, taken and carried away, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

Middlesex to wit. The jurors of our lord the king, upon their oath present, that at the delivery of the gaol of our lord the king of his county of Surry, holden at Kingston upon Thames, in and for the county aforesaid, on, &c. before William earl of Mansfield, lord chief justice of our lord the king, assigned to hold pleas in the court of our said lord the king, before the king himself, and Sir William Henry Ashurst, knight, one other of the justices of our said lord the king, assigned to hold pleas in the court of our said lord the king before the king himself, then justices of our said lord the king assigned to deliver the said gaol of the prisoners therein being, M. T. late of, &c. labourer, was duly convicted, (*s*) for that he the said M. T. on, &c. with force and arms, at, &c. (*t*) seventeen yards of linen cloth, of the value of thirty shillings, of the goods and chattels of one T. W. then and there being found, feloniously did steal, take and carry away, against the peace of our said lord the king, his crown and dignity, as by the record thereof remaining filed in the said court of gaol delivery, may more fully and at large appear. And the jurors aforesaid, upon their oath aforesaid, do further present, that J. C. late of, &c. labourer, afterwards, to wit, on the said, &c. with force and arms, at the parish of Saint Martin in the Fields, in the county of Middlesex, aforesaid, the goods and chattels aforesaid, so as aforesaid, feloniously stolen, taken and carried away, feloniously did receive, and have, (the said J. C. then and there well knowing the aforesaid goods and chattels to have been feloniously stolen, taken and carried away,) against the form of the statute, in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

Middlesex. The jurors of our lord the king upon their oath present,\* that J. D. late of the parish of St. Leonard Shore-ditch, in the county of Middlesex, labourer, and M. his wife, being persons of evil name and fame, and of dishonest conversation, and common buyers and receivers of stolen goods,

Against an accessory for receiving stolen goods in one county, where principal was convicted in another.  
(*r*)

For a misdemeanor in receiving stolen goods as accessory, the chief felon being un-

(*q*) If the defendant only received a part of the goods stolen here insert "last mentioned."

(*r*) See a similar precedent, Cro. C. C. 49. Starkie, 457. This indictment is founded on 2 and 3 Ed. VI. c. 24. If defendant received only part of the goods, observe as the last precedent and notes.

(*s*) It is not necessary to show that the principal was attainted.

East, P. C. 782. ante 959.

(*t*) A question has been made whether the indictment ought not expressly to aver the commission of the felony in the first county, see ante 1 vol. 274. 9 Co. 114. 2 Stark. 458. n. d. id. 1 vol. 157. 130.

(*u*) See similar precedent, Hand. Prac. 467. Cro. C. C. 48. Starkie, 458. As to the offence, indictment, and evidence, see ante 951 to 959.

known, on 22 Geo. II. c. 58.  
(*u*)  
[\*963]

on the fifth day of June, in the twenty-second year of the reign of our sovereign lord George the Third, king of Great Britain, &c. with force and arms, at the parish aforesaid, in the county aforesaid, one silver tankard, of the value of six pounds, of the goods and chattels of one S. M. by one E. F. (or "by a certain evil disposed person to the jurors aforesaid, yet unknown") then lately before feloniously stolen, of the said E. F. (or "of the same evil disposed person") unlawfully, unjustly and for the sake of wicked gain, did receive and have, they the said J. D. and M. his wife, then and there well knowing and each of them well knowing the said goods and chattels to have been feloniously stolen,) to the great damage of the said S. M. against the form of the statute in that case made and provided, and against the peace of our said lord the king, his crown and dignity.

### INDICTMENTS FOR LARCENY, RECEIVER OF NAVAL STORES.

Indict-  
ment for  
having na-  
val stores  
found in  
custody,  
on 9 and  
10 W. III.  
c. 41. s. 2.  
(w)  
[\*964]

[*Commencement as ante* 960.] That A. B. late of, &c. and C. D. late of the same, labourers, being persons of evil name and fame, and of dishonest conversation, (x) on, &c. (then, or at any time before,\* not being contractors, nor either of them, then or at any time before, being a contractor with, or authorized by the principal officers or commissioners of our said lord the king, of the navy, ordnance, or victuallers, or victualling office, for the use of our said lord the king, to

(w) See other precedents, Cro. C. C. 293. 6 Wentw. 405. 2 Ld. Raym. 1104. *As to the offence*, see at large ante 955. and 9 & 10 W. III. c. 41. s. 1, 2. 9 Geo. I. c. 8. 17 Geo. II. c. 40. s. 10. 12 Geo. III. c. 21. 39 & 40 Geo. III. c. 89. and see Cowp. 610. 5 T. R. 544. *Indictment*. Though the statute of William prescribes a specific penalty for this offence on conviction, it has been holden to be indictable, 2 Ld. Raym. 1104. *Evidence*. The informer, who in case of the penalty being imposed by way of pecuniary mulct, would be entitled to a share of it is still a competent witness, 1 Esp. Rep. 169. 3 Esp. Rep. 68. Peake, N. P. 217. though it was once holden otherwise, 1 Esp. Rep. 96. A peace officer who in searching for other goods discovers naval stores,

and an information is filed in pursuance of such discovery, is deemed the informer, 1 Esp. Rep. 95. And, in general, the person on whose suggestion a seizure of naval stores is made, is to be deemed the informer, not he, who after the seizure, informs the admiralty, or on whose relation the proceedings are instituted, 1 Esp. Rep. 144. *Judgment*. The court have the power, in their discretion, of either sentencing the defendant to imprisonment and whipping, or to payment of the penalty, 5 T. R. 370. 1 Esp. Rep. 169. Each defendant, on a joint indictment, is liable to a separate penalty Cowp. 610. 5 T. R. 370.

(x) This allegation seems unnecessary, they are expressed in Cro. C. C. 7 Ed. 510. but are omitted in 8 Ed. 293.

make any stores of war or naval stores whatsoever, with the marks usually used to and marked upon our said lord the king's said warlike and naval or ordnance stores, nor then, nor either of them, then being retained or employed by any such contractors for the use in that behalf aforesaid,) with force and arms, at, &c. aforesaid, then and there, unlawfully had in the custody and possession of them the said A. B. and C. D. a certain quantity of cordage, containing in length seventy yards, and in thickness three inches and upwards, of the value of twenty pounds of lawful money of Great Britain, which said quantity of cordage then and there was wrought with a white thread, laid the contrary way, (being the mark with which cordage of that dimension, being warlike and naval stores of our said lord the king, and other such warlike and naval stores then and before usually were and yet are marked,) against the form, &c. (y) and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said quantity of cordage, (being of the goods and warlike and naval stores of our said lord the king, and so as aforesaid wrought and marked,) then and there was found in the custody and possession of them the said A. B. and C. D. (they the said A. B. and C. D. not being such contractors, nor either of them being such contractor, nor retained or employed, nor either of them being retained or employed, as aforesaid, as by the statute in such case made and provided is required,) to the diminution of the warlike and naval stores of our said lord the king, to the evil example, &c. against the form, &c. and against the peace, &c.

Second  
count.

One piece of wrought canvass, containing twenty yards in length, of the value of — which said piece of canvass was marked with a blue streak in the middle, (being the mark with which the canvass and other such warlike, &c.) [as above.]

The like  
as to canvass.

[If iron or brass marked with the broad arrow, say] One iron bolt, of the value of three shillings, which said iron bolt was marked with the broad arrow, (being the mark with which the iron bolts, and other such warlike, &c. [as before] so of nails, hinges, padlocks, and other such stores [as the fact may be.]

The like  
as to iron  
or brass.

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(y) The indictment must contain this allegation, or it will be invalid, 2 Ld. Raym. 1104.

## INDICTMENTS FOR LARCENY—AS TO THING TAKEN.

[\*965]

For steal-  
ing *shrubs*  
in the  
night time  
from a  
garden, on  
6 Geo.  
III. c. 36.  
(z)

That\* A. B. late of, &c. on, &c. at, &c. in the night time, to wit, about the hour of 12 in the night of the same day, with force and arms — shrubs called — of the value of 5s. and — plants called — of the value of 5s. then and there growing in a certain garden ground of E. F. there situate and then and there being the property of the said E. F., did feloniously pluck up and steal, take and carry away, against the form, &c. and against the peace, &c.

For a sin-  
gle felony  
in stealing  
lead affix-  
ed to a  
dwelling-  
house, on  
4 Geo. II.  
c. 32. (a)

That A. B. late of London, labourer, after the twenty-fourth day of June in the year of our Lord one thousand seven hundred and thirty-one, to wit, on, &c. with force and arms, at, &c. sixty pounds weight of lead, of the value of four shillings, belonging to C. D.\* then and there fixed to the dwelling house of the said C. D. feloniously did rip, steal, take and carry away, against the form of the statute, &c. and against the peace, &c.

[\*966]

Against  
the aider  
and assist-  
er in the  
above of-  
fence.

[State the offence of the principal as in last precedent to the end, and then proceed as follows.] And the jurors, &c. that C. W. late of, &c. aforesaid, labourer, on the said &c.

(z) See a similar precedent, 2 Starkie, 441. This indictment is founded on 6 Geo. III. c. 36. s. 1. which makes the offence a single felony and punishable with transportation for seven years; see this act recited and 6 Geo. III. c. 48, s. 3. which punishes similar offences in the day time with milder penalties, ante 926. Under this act, the offence must be proved to have been committed in the night; and the same rules apply as in case of burglary; so that if there were sufficient day-light left to enable a witness to distinguish the features of the prisoner, he must be acquitted, Leach, 222. The court are not bound to pass sentence of transportation, but may give judgment in their discretion, as in case of any other clergyable felony, 1 Leach 481.

(a) See other precedents, 1 Leach, 318. Cro. C. C. 7th. Ed. 459. Cro. C. C. 8th Ed. 251. Starkie 453. The offence is created by 4 Geo. II. c. 32. See that act and 21. Geo. III. c. 68. which extends it, and the 25. Geo. II. c. 10. respecting lead from mines

recited ante 927. A church is a building within the meaning of this statute, 1 Leach, 318. East P. C. 592, 3. It has been also holden that if a person take a house for the express purpose of stripping it of the lead affixed to it, and effect this design, he is guilty of felony, 2 Leach, 850. But stealing a casement is not within the meaning of the act, and is therefore no offence, in itself, for which the party may be indicted, 1 Leach, 496.—*Indictment.* When the stealing was effected from a church, the property may be laid in the vicar, if it be necessary to state any owner which seems doubtful, ante 1 vol. 214. 1 Leach. 318. and 320 in notis. The conclusion "contrary to the form of the statute," is necessary as the offence was not indictable at common law. As to the law and form respecting those who receive stolen lead, see ante 953.—*Punishment.* If the defendant be found guilty of stealing lead to the value of ten pence, he may have judgment to be whipped as for petit larceny, 2 East P. C. 594.



with force and arms, at, &c. aforesaid, feloniously was present, aiding, abetting and assisting the said A. B. in stealing the said sixty pounds weight of lead, so as aforesaid fixed to the said dwelling house, against the form of the statute, &c. and against the peace, &c.

[As in the precedent before the last to the end, and then as follows.] And the jurors, &c. do further present, that E. F. late of, &c. labourer, afterwards, to wit, on the said, &c. with force and arms, (b) at, &c. aforesaid, the said sixty pounds weight of lead, so as aforesaid feloniously stolen, taken and carried away, feloniously did receive, (he the said E. F. then and there well knowing the said sixty pounds weight of lead, to have been feloniously stolen,) against the form of the statute, &c. and against the peace, &c.

That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, — pounds weight of lead, of the value of — belonging to the Reverend C. D. Clerk, Rector of the parish aforesaid, in the county aforesaid, and then and there being fixed to the parish church of — aforesaid, in the county aforesaid, then and there feloniously did steal, take and carry away against the form of the statute, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. on the said — day of — in the year aforesaid, with force and arms, and at the parish aforesaid, in the county aforesaid, — pounds weight of lead, of the value of — belonging to E. F. and G. H. Church wardens of the parish aforesaid, in the county aforesaid, and then and there being fixed to the parish church of — aforesaid, in the county aforesaid, then and there feloniously did steal, take and carry away, against the form of the statute, &c. and against the peace, &c. [Commencement as in second count.] — pounds weight of lead, of the value of — belonging to the inhabitants and parishioners of the parish of — aforesaid in the county aforesaid, and then and there being fixed to the parish church of — aforesaid, in the county aforesaid, then and there feloniously, &c. [as in the second count to the end.] — pounds\* weight of lead, of the value of — then and there being fixed to the parish church of — aforesaid, in the county aforesaid, then and there feloniously, &c. [as in second count to the end.]

London. The jurors for our said lord the king, upon their oath present, that S. C. late of London, widow, and A. J. late of the same, yeoman, being common buyers and receiv-

Against the receiver of the stolen lead.

For stealing lead fixed to a church on 4 Geo. II. c. 32.

(c) First count, laying the property in the lead in the rector.

Second count, laying the property in the lead in the churchwardens of the parish.

Third count, laying the property in the inhabitants and parishioners.

Fourth count generally for stealing lead from off a church contrary to the statute, &c.

[\*967] For receiving

(b) The words "force and arms," are inserted in some precedents, Cro. C. C. 7th Ed. 460. but omitted in others, see Starkie, 454.

Crim. Law.

(c) See notes to the last precedent. The second and third counts could not be supported in law, see 1 Leach, 320. in notis.

stolen lead, knowing it to be stolen, on 29 Geo. II. c. 30. s. 1. for a misdemeanor before the conviction of the principal felon, (d) First count for receiving, &c. generally. Second count, for receiving, &c. under value, &c.

ers of stolen lead, iron, bell metal, and other things, on the second day of March, in the twenty-first year of the reign of our sovereign lord George the third, king of Great Britain, &c. with force and arms, at London, that is to say, at the parish of Allhallows upon the wall, in the ward of Broad Street, in L. aforesaid, unlawfully and unjustly, did buy and receive, and each of them did buy and receive, two pounds and one half pound weight of bell metal, of the value of 17 pence, and thirty-two pounds weight of lead, of the value of four shillings of the goods and chattels of one J. D., then lately before feloniously stolen, taken and carried away, by one G. B. and by one T. H., they the said S. and A. and each of them, then and there well knowing the same to be stolen and unlawfully come by, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said S. C. and A. J., afterwards, to wit, on the same day and year aforesaid, with force and arms, at, &c. aforesaid, unlawfully and unjustly, in a clandestine manner, at under rates, prices and values, did buy and receive, and each of them did buy and receive from the aforesaid G. B. and T. H., other two pounds and one half-pound weight of bell metal, of the value of ten pence, and other thirty-two pounds weight of lead, of the value of four shillings, of the goods and chattels of the aforesaid J. D. there lately before feloniously stolen, taken and carried away, by certain ill-disposed persons, to the jurors aforesaid as yet unknown, they the said S. C. and A. J., and each of them then and there well knowing the same to have been stolen, and unlawfully come by, against the form, &c. and against the peace &c.

For felony in stealing bills of exchange, being in payment for duties to the king, on 2 Geo. II. c. 25. s. 3. (f)

City of Worcester, and county of the same. That J. J.

(d) See other precedents. Cro. C. C. 7th Ed. 457. 8th Ed. 250. Starkie, 459. and see the law affecting receivers at large, and the requisites of indictments against them ante 927.

(f) See other precedents, Cro. C. C. 296. Cro. C. A. 287. Starkie, 442. This precedent describes the bill more fully than necessary, see below. The offence is founded on 2 Geo. II. c. 25. s. 3. revived and made perpetual by 9 Geo. II. c. 18. See the act recited ante 928. Before this statute securities could only be objects of theft to the amount of the paper and stamps; and it has been contended that these were too insignificant to be called "goods and chattels," and, there-

fore, were not subjects of larceny, 1 New Rep. 3. But this doctrine does not seem well founded; for in the celebrated case of Mr. Aslett, the majority of the judges thought invalid exchequer bills were bank effects within 15 Geo. II. c. 13. s. 12. 1 New Rep. 9. 2 Leach, 958. And it has been subsequently holden, that when the notes of a country bank having been paid by the correspondent in London, and therefore, no longer valuable as securities, are sent to the country in order to be re-issued (which they may be under 44 Geo. III. c. 98. and 48 Geo. III. c. 149. s. 14) and are stolen during the journey, an indictment may be sustained to the value of the stamps and paper, which still might

late of, &c.\* on, &c. with force and arms, at, &c. aforesaid, feloniously did steal, take and carry away a certain bill of exchange, bearing date the twelfth day of October, in the year of our Lord one thousand seven hundred and eighty-five, subscribed with the name E. I. for J. B. W. and I., and directed to certain persons by the names and description of Messrs. B. C. E. and P. bankers, London, for the payment of five hundred and twenty-six pounds, seven shillings and eight pence, nineteen days after date to the order of one T. F. for value received, and indorsed by the said T. F., and also indorsed by one J. B. in substance as follows, to wit, "pay the contents to Messrs. C. and Co. or order, being his majesty's money on return, J. B." the said bill of exchange being then and there of the value\* of five hundred and twenty-six pounds, seven shillings and eight pence, of lawful money of Great-Britain, and being the property of our lord the king, and the money therein mentioned payable and secured by the said bill of exchange, as aforesaid then and there being due and unsatisfied to our said lord the king, the proprietor thereof, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that, &c. *[same as the first count, only alleging the bill of exchange to be]* the property of the said J. B., and the money therein mentioned payable and secured

First count, laying the property in his majesty.

[\*968]

[\*969]

Second count, laying the property in J. B.

have been used by the owners, 2 Leach, 1036. But it is not felony under the statute to steal bankers' notes which have been completely executed but never put in circulation because no money is due upon them, 4 Bla. Com. 234. n. 6. Christ. Ed. Nor is it an offence under the act to compel a man to write and sign a note on the paper and with the ink of the defendant, 2 Leach, 673. ante 929. As to the embezzlement of notes &c. by cashiers, clerks and servants, see post 935, 6. The *Indictment* must follow the language of the statute on which it depends. It does not seem at all necessary to set forth the particulars of the instrument stolen, but merely to describe it in the language of the statute, and add its value in order to show the degree of the offence it is intended to charge. For it has been holden sufficient to allege that the defendant stole "divers, to wit, nine bank notes for the payment of divers sums of money, in the whole amounting to a large sum of money to wit, the sum of — of lawful mo-

ney, and of the value of —" without even stating the value of any individual note, 2 Leach, 1103. And an indictment describing two promissory notes as "a promissory note for the payment of one guinea, and also one other promissory note for the payment of five guineas, which said notes were the property of J. S. and were due and unsatisfied," has been holden valid, 2 East P. C. 602. Nor will it make any difference if a bill of exchange be described without stating an indorsement made since it came into the offender's possession, *id. ibid.* On the other hand, the most ample description will not supply the omission of the terms used in the statute. Thus if the defendant be charged with the theft of "a certain note commonly called a bank note," the purport of which is afterwards accurately stated the proceedings will be defective, as not following any of the terms used by the legislature to ascertain the objects of larceny, 2 East P. C. 601.

Third  
count, lay-  
ing the  
property  
in several  
persons.

For felony  
in stealing  
a promiss-  
ory note,  
on 2 Geo.  
II. c. 25. s.  
3. (g)

For felony  
in stealing  
a bill of  
exchange  
on 2 Geo.  
II. c. 25. s.  
3. (h)

For felony  
in stealing  
a bank  
note, on 2  
Geo. II. c.  
25. s. 3. (i)  
[\*970]

For steal-  
ing two  
promisso-  
ry notes,

by the said last mentioned bill of exchange as aforesaid, then and there being due and unsatisfied to the said J. B. the proprietor thereof, against the form of the statute in, &c. and against the peace, &c. And the jurors, &c. do further present, that, &c. [*same as first count, only stating the bill of exchange to be*] the property of S. C. widow, R. L., R. D., J. C. and J. K., and the money therein mentioned, payable and secured by the said last mentioned bill of exchange as aforesaid, then and there being due and unsatisfied to the said S. C., R. L., R. D., J. C. and J. K. the proprietors thereof, against the form of the statute, &c. and against the peace, &c.

That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, feloniously did steal, take and carry away, one promissory note, for the payment of the sum of — pounds, and of the value of — pounds, the said note at the time of committing the felony aforesaid, being the property of one C. D. and the said sum of — pounds, payable and secured by the same promissory note being then due and unsatisfied to the said C. D. the proprietor thereof, against the form, &c. and against the peace, &c.

That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, feloniously did steal, take and carry away, one bill of exchange for the payment of ten pounds, and of the value of ten pounds, the said bill of exchange, at the time of committing the felony aforesaid, being the property of C. L., and the said sum of ten pounds payable and secured by and upon the same bill of exchange, then, to wit, at the time of committing the felony aforesaid being due and unsatisfied to the said C. L., the proprietor thereof, against the form, &c. and against the peace, &c.

That A. B. late of, &c. on, &c. at, &c. aforesaid, with force and arms, at, &c. aforesaid, feloniously did steal, take and carry away\* one bank note for the payment of ten pounds, and of the value of ten pounds, then and there being found, and then and there being the property of the said C. L. and the said sum of ten pounds, payable and secured by and upon the said note, then and there remaining due and unsatisfied to the said C. L. the proprietor thereof, against the form of the statute, &c. and against the peace, &c.

That E. B. late of, &c. labourer, on, &c. with force and arms, at, &c. aforesaid, feloniously did steal, take and carry away two promissory notes of the value of fifty pounds each,

(g) See a similar precedent, Cro. C. C. 296. and see general note ante 928.

(h) See a similar precedent, Cro. C. C. 296, Starkie, 442. and see ge-

neral note ante 928.

(i) See a similar precedent, Cro. C. C. 296. Starkie, 442. see general note ante 928.

the property of J. B., against the form, &c. and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. do further present, that the said E. B. afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, feloniously did steal, take and carry away, two pieces of paper, each of the said pieces of paper, being then and there stamped with a stamp of the value of four shillings and six pence, the same being the stamp directed and required by the statute in such case made and provided, on every promissory note for the payment to the bearer on demand of any sum of money exceeding 30*l.* and not exceeding 50*l.* both the above mentioned pieces of paper being so stamped as aforesaid at the time of the committing the felony aforesaid, and the goods and chattels of the said J. B., and each and every of the said stamps being then available and of full force and effect, against the peace, &c. And the jurors, &c. do further present that the said E. B. afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, two pieces of paper duly stamped as directed and required by the statute in such case made and provided, of the value of nine shillings, of the goods and chattels of the said J. B., feloniously did steal, take and carry away, against the peace, &c.

That A. B. late of, &c. C. D. late of, &c. and E. F. late of, &c. not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, after the first day of June, in the year of our lord, one thousand seven hundred and twenty-three, to wit, on, &c. being armed with pistols and other offensive weapons, and\* having their faces blacked and disguised, with force and arms, at, &c. aforesaid, in a certain park there lying and being (inclosed with wooden pales, where deer had been usually and then were kept, belonging to Sir J. S. baronet,) unlawfully and feloniously did enter and appear, and one fallow deer of the price of —, of the goods and chattels of the said Sir J. S. in the same park then and there being found with force and arms, then and there unlawfully, wilfully and feloniously, did hunt, wound, kill, destroy, steal, take and carry away, against the form of the statute, &c. in contempt, &c. to the evil example, &c. and against the peace, &c.

on Geo. II. c. 25. with counts for stealing the stamps on which they were written.

(j) Second count for stealing the stamps.

Third count, for stealing the stamps, in a more general form.

For capital felony in appearing armed, disguised, and stealing deer in an inclosed park, with painted faces, on the black act, 9 Geo. I. c. 22.

(k)

[\*971]

(j) The defendant may be indicted for stealing stamps and paper, if they can be used again, though the bill is not valid, see notes ante 968. n. f. 2 Leach, 1036. see general note ante 917 to 959.

(k) See similar precedents, Cro. C. C. 82. Starkie, 438. As to the

offence founded on 9 Geo. I. c. 22. see ante 929. The *Indictment* must strictly pursue the terms of the statute, which having been passed on a particular occasion, appears, now the necessity has ceased, exceedingly severe.



For a single felony, on 16 Geo. III. c. 30. in killing a deer in the forest of Needwood, after being respectively convicted once before on similar offences. (1)

[\*972]

Conviction of J. S.

That on, &c. W. T. of, &c. keeper, came before George, lord V., and A. B. esquire, two of the justices of our said lord the king, assigned to keep the peace of our said lord the king in the said county, and also to hear and determine divers felonies, trespasses and other misdemeanours committed within the said county, and gave the said justices to understand and be informed, that B. B. late of, &c. labourer, on, &c. in the forest or chase of Needwood, then of our said lord the king, in the county aforesaid, and wherein deer then were, and long before had been usually kept, did kill a certain fallow deer without the consent of our said lord the king, then being the owner of the said forest or chase, and of the deer within the same, or of any other person then chiefly entrusted with the custody of the said forest or chase, or of the deer within the same, against the form of the statute, &c. and also that J. A. late of, &c. miller, on the said, &c. in the forest or chase aforesaid, did wilfully, knowingly and unlawfully aid and assist him the said B. B. in so unlawfully killing the said fallow deer, against the form of the statute aforesaid, and thereupon afterwards, to wit, on the said, &c. at, &c. aforesaid, they the said B. B. and J. A. then appearing and being present before the said justices, were severally asked by them the said justices, if they could say any thing in their defences severally and respectively, why they or either of them should not be convicted of the premises severally charged upon them in form aforesaid, and had nothing to say in their defences, severally and respectively, and that the same premises being also then fully and duly proved upon the oath of J. B. of, &c. labourer, a credible witness, it manifestly appeared to them the said justices, that they the said B. B. and J. A. were severally guilty of the said offences\* severally charged upon them in manner aforesaid, and that it was therefore then and there considered and adjudged by them the said justices, that the said B. B. and J. A. should be severally convicted and that they were severally convicted thereof, according to the form of the statute, &c. and that for the offences aforesaid, each of them the said B. B. and J. A. according to the form of the statute aforesaid, had severally forfeited the sum of thirty pounds of lawful money of Great Britain, to be distributed as the statute aforesaid did direct, [*here followed the conviction of J. S. like that of B. B.*] And the jurors, &c. do further present, that the said J. A. and J. S. being ill-designing and disorderly

(1) See a similar precedent, Cro. C. A. 132. see ante 929. Under the 43 Geo. III. c. 107. which makes the hunting or destroying of deer without the consent of the owner, felony, punishable with transportation

for seven years; it is necessary to call the owner of the deer, to prove that he did not consent, or the prisoner will be acquitted, 2 Campb. 654.



persons, not regarding the laws and statutes of this realm, nor fearing the pains and penalties therein contained, after having been severally so convicted as aforesaid, afterwards and after the tenth day of June, which was in the year of our Lord one thousand seven hundred and seventy-six, to wit, on, &c. with force and arms, at the ward of Tutbury, otherwise Tutbury-ward, (being an extra parochial place) (*m*) in the forest of Needwood, in the said county of S., the said forest then and long before and still being the forest of our said lord the king, there called and known by the name of Needwood forest, and being a forest where deer on the said, &c. were and for the space of forty years and more, then last past, have been usually kept, and still are usually kept, one male fallow-deer of our said lord the king, of the price of twenty shillings, there then found, without the consent of our said lord the king, then being the owner of the said forest, and of the said last-mentioned deer, or of any other person then chiefly entrusted with the custody of the said last-mentioned deer, and of the said forest, and without being in any wise duly authorised in that behalf, then and there unlawfully and feloniously did kill, to the great damage of our said lord the king, to the evil example, &c. against the form of the statute, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said J. A. and J. S., after having been severally so convicted as aforesaid, afterwards, to wit, on the said, &c. with force and arms, at said ward of Tutbury, otherwise Tutbury-ward, in the said county of S., in the said forest of our said lord the king, called Needwood forest, then and long before, and still being the forest of our said lord the king, there called and known by the name of Needwood forest, and being a forest where deer then were, and long before, and ever since have been usually kept, one other male fallow deer, of our said lord the king, of the price of twenty shillings, there then found, without the consent\* of our said lord the king, then being the owner of the said forest, and of the said last-mentioned deer, or of any other person then chiefly entrusted with the custody of the said last-mentioned deer, and of the said forest, and without being in anywise duly authorised in that behalf, then and there unlawfully and feloniously did take and carry away, to the great damage, &c. [*as in first count.*] Third count "for killing in a Chase." Fourth count "for taking in a chase."

Second  
count for  
taking in a  
forest.

[\*973]

That A. B. late of, &c. within six calendar months next before the day of the taking of this inquisition, to wit, on, &c. with force and arms, at, &c. unlawfully did enter into a

For a mis-  
demean-  
our in  
stealing

---

(*m*) These words were omitted in 2nd and 4th counts.

*fish out of a park or paddock, on 5 Geo. III. c. 14. s. 1. (m)*  
 First count for stealing, taking and killing fish bred, kept and preserved, in a pond situate in a park.  
 Second count for destroying fish preserved in a pond situate in a park.

For a misdemeanor, on 31 Geo. III. c. 51. for taking oysters, &c. from a fishery.  
 (o)  
 [\*974]

Second count.

certain park, then and there fenced in and enclosed, called D. Park, of and belonging to one E. F. esquire, and in which said park there then was a certain pond of water, and then and there, to wit, on, &c. at, &c. feloniously (n) did steal, take, kill and carry away certain fish, to wit, thirty fish called carp, thirty fish called tench, and thirty fish called perch, of the value of forty shillings, then and there bred, kept and preserved in such pond of water, without the consent of the said E. F. the owner of the said pond and fish, against the form, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B. afterwards and within six calendar months next before the day of the taking of this inquisition, to wit, on the said, &c. with force and arms, at, &c. aforesaid, unlawfully did enter into the said park called D. park, so fenced in and enclosed, of and belonging to the said E. F. as aforesaid, and in which said park there then was a certain pond of water, and then and there, to wit, on the same day and year last aforesaid, at, &c. aforesaid, feloniously did destroy certain fish, to wit, &c. [*as before,*] then and there preserved in the said last-mentioned pond of water, without the consent of the said E. F. the owner of the said last-mentioned pond and fish, against the form, &c. and against the peace, &c. *Third Count like the first, using the word "paddock" instead of "park." Fourth Count like the second, with the same variation.*

That A. B. late of, &c. and C. D. late of, &c. on, &c. with force and arms in the county aforesaid, (p) by means of a certain net, did unlawfully,\* knowingly, and wilfully take and catch from a certain oyster fishery within the limits and precincts of the port of King's Lynn in the said county of N., of and belonging to the mayor and burgesses of the borough of Lenne Regis, commonly called King's Lynn, in the county of N.; one gallon of oysters of the value of one shilling, of the goods and chattels of the said mayor and burgesses, the same fishery being an oyster fishery of this kingdom, and the said A. B. and C. D. &c. not being the owners, lessees, or occupiers of such fishery, or otherwise lawfully intitled to take or catch oysters therein, against the peace, &c. and against the form of the statute, &c. And the jurors, &c. that the said A. B. and C. D. on the said, &c. did unlawfully,

(m) See similar precedents, Cro. C. C. 198. Starkie, 437. 4 Went. 356. Cro. C. A. 291. As to the offence, see ante 929. In the indictment there is no occasion to aver the fish to be the goods and chattels of any one, but if those words are inserted, they may be rejected as sur-

plusage, East P. C. 611. Starkie 182.

(n) The precedents usually contain this word.

(o) As to the offence, see ante 930.

(p) There is no occasion to lay any parish, 44 Geo. III. c. 144. s. 3.

knowingly and wilfully use a certain net within the limits of a certain oyster fishery, within the limits and precincts of the port of King's Lynn in the said county of N., of and belonging to the mayor and burgesses of the borough of Lenne Regis, commonly called King's Lynn in the county of N., for the purpose of taking and catching oysters, the same fishery being an oyster fishery of this kingdom and the said A. B. and C. D. not being the owners, lessees, or occupiers of such fishery, or otherwise lawfully intitled to take or catch oysters therein, against the peace, &c. and against the form of the statute, &c. And the jurors, &c. do further present, that the said A. B. and C. D. on, &c. with force and arms in the county aforesaid, by means of a certain dredge, did unlawfully, knowingly and wilfully take and catch from a certain oyster fishery within the limits and precincts of the port of King's Lynn in the said county of N. of and belonging to the mayor and burgesses of the borough of Lenne Regis, commonly called King's Lynn, in the county of N., one gallon of oysters of the value of one shilling, of the goods and chattels of the said mayor and burgesses, the same fishery being an oyster fishery of this kingdom; and the said A. B. and C. D. not being the owners, lessees, or occupiers of such fishery, or otherwise lawfully intitled to take or catch oysters therein, against the peace, &c. and against the form of the statute, &c. And the jurors, &c. do further present, that the said A. B. and C. D. on the said, &c. with force and arms in the county aforesaid, did unlawfully, knowingly and wilfully use a certain dredge within the limits of a certain oyster fishery within the limits and precincts of the port of King's Lynn, in the said county of N., of and belonging to the mayor and burgesses of the borough of Lenne Regis, commonly called King's Lynn, in the county of N., for the purpose of taking and catching oysters, the same fishery being an oyster fishery of this kingdom; and the said A. B. and C. D. not being the owners, lessees, or occupiers of such fishery, or otherwise lawfully intitled\* to take and catch oysters therein, against the peace, &c. and against the form of the statute, &c.

Third  
count.Fourth  
count.

[\*975]

That A. B. late of, &c. on, &c. with force and arms, did knowingly, wilfully, and feloniously steal, take and carry away from a certain oyster bed within the limits and precincts of the port of King's Lynn, in the said county of N., the property of the mayor and burgesses of the borough of Lenne Regis, commonly called King's Lynn, in the county of Norfolk, and sufficiently marked out as such, one gallon of oysters of the value of one shilling, of the goods, chattels

For a single felony,  
on 43 Geo:  
III. c. 144.  
for stealing oysters. (g)

(g) As to the offence, see ante 980.

Second  
count.

and property of the said mayor and burgesses, against the peace, &c. and against the form of the statute, &c. And the jurors, &c. do further present, that the said A. B. on the said, &c. with force and arms did knowingly, wilfully, and feloniously steal, take, and carry away from a certain oyster laying, within the limits and precincts of the port of King's Lynn, in the said county of N., the property of the mayor and burgesses of the borough of Lenne Regis, commonly called King's Lynn, in the county of N., and sufficiently marked out as such, one gallon of oysters of the value of one shilling, of the goods, chattels and property of the said mayor and burgesses, against the peace, &c. and against the form of the statute, &c. And the jurors, &c. do further present, that the said A. B. on the said, &c. with force and arms, did knowingly, wilfully, and feloniously steal, take and carry away from a certain oyster fishery within the limits and precincts of the port of King's Lynn in the said county of N., the property of the mayor and burgesses of the borough of Lenne Regis, commonly called King's Lynn, in the said county of N., and sufficiently marked out as such, one gallon of oysters of the value of one shilling, of the goods, chattels, and property of the said mayor and burgesses, against the peace, &c. and against the form, &c.

Third  
count.

For a mis-  
demean-  
our in  
stealing  
conies from  
an occupi-  
er of  
ground,  
used for  
the breed-  
ing and  
keeping  
thereof, in  
the night  
time, on 5  
Geo. III. c.  
14. s. 6. (r)  
(\*976)

Berkshire. The jurors, &c. that A. B. late of, &c. on, &c. with force and arms, at, &c. wilfully and wrongfully in the night time of the said day, that is to say, about the hour of eleven in the night of the said day, did enter into a certain warren called W. C. there situate, and then and there lawfully used for the breeding and keeping of conies, and then in the occupation of J. B., and did then and there, wilfully and wrongfully take in the night time of the said day, that is to say, about the hour of eleven in the night of the said day, twenty conies of the price of eight shillings, against the will of the said J. B. then and there being the occupier of the said warren\* called W. C. so as aforesaid, then and there lawfully used for the breeding and keeping of conies, to the great damage, &c. against the form, &c. and against the peace, &c. *Second count same as the first, only using the word "kill" instead of "take."*

Against an  
aider and  
abettor to  
persons  
unknown,  
in stealing  
in the

Berkshire, to wit. The jurors, &c. That some person or persons, to the jurors aforesaid as yet unknown, on, &c. wilfully and wrongfully, in the night time of the said day, that is to say, about the hour of two in the night of the said day, with force and arms, at, &c. did enter into a certain warren

(r) See a similar precedent, Cro. 436. As to the offence, see ante C. C. 122. Cro. C. A. 47. Starkie. 93b.

called P. F. situate in the parish aforesaid, in the county aforesaid, then and there lawfully used for the breeding and keeping of conies, and then in the occupation of one J. A. and did then and there wilfully and wrongfully take, in the night time of the said day, that is to say, about the hour of two in the night of the said day, six conies, of the price of four shillings, against the will of the said J. A. then and there being the owner and occupier of the said warren called P. F. so as aforesaid, then and there lawfully used for the breeding and keeping of conies, to the great damage, &c. against the form, &c. and against the peace, &c. And the jurors, &c. do further present, that G. F. late of, &c. on the said, &c. with force and arms, at, &c. was present, aiding and assisting the said person or persons as yet unknown to the said jurors, wilfully and wrongfully in the night time of the said day, to wit, about the hour of two in the night of the said day, to enter into the said warren called P. F. so as aforesaid, then and there lawfully used for the breeding and keeping of conies, and then in the occupation of the said J. A. and then and there wilfully and wrongfully to take in the night time of the said day, that is to say, about the hour of two in the night of the said day, the said six conies, against the will of the said J. A. then and there being the owner and occupier of the said warren called P. F. so as aforesaid then and there lawfully used for the breeding and keeping of conies, to the great damage, &c. against the form, &c. and against the peace, &c. [*Add a count for aiding persons unknown, to kill conies.*]

nighttime,  
conies out  
of ground  
in the oc-  
cupation  
of the own-  
er, for a  
misdemea-  
nour, on 5  
Geo. III. c.  
14. s. 6. (s)

That A. B. late of, &c. on, &c. at, &c. aforesaid, one gelding,\* (u) of the price of six pounds, of the goods and chattels of J. D. then and there found, and being then and there, feloniously did steal, take, and lead (w) away, against the peace, &c.

For a capi-  
tal felony  
in stealing  
a horse. (s)  
[\*977]

That J. Y. late of, &c. and J. Y. late of, &c. with force and arms, at, &c. one wether sheep of the price of ten shillings, four ewe sheep of the price of forty shillings, and five lambs of the price of twenty-five shillings, of the goods and

For a capi-  
tal felony,  
sheep steal-  
ing,  
against the

(s) See a similar precedent, Cro. E. C. 122 Starkie, 436.

(t) See similar precedents, Cro. C. C. 7th Ed. 445. 8th Ed. 234. Starkie, 437. As to the offence which is felony without benefit of clergy, see ante 931. It seems, however, that if the jury find the value of the horse to be within a shilling, the prisoner will be guilty only of petit larceny; for, as with- in that sum, he need not pray his

clergy, he cannot be effected by a statute which takes it away, ante 925. Any person apprehending and prosecuting to conviction a horse stealer, shall have a certificate signed by the judge to exempt him from all parish and ward offices, 10 & 11 W. III. c. 23.

(u) Say "mare," or "horse," ac- cording to the fact.

(w) This term is proper, 1 Hale, 504. ante 950

principals  
and re-  
ceiver of  
the stolen  
sheep, on  
14 Geo. II.  
c. 6. s. 1.  
(x)

[\*978]

For a capi-  
tal felony  
in killing  
sheep,  
with an in-  
tent to  
steal part  
of their  
carcases,  
on 14 Geo.  
II. c. 6. s.  
1. (y)

For milk-  
ing a cow  
and steal-  
ing the  
milk. (z)

chattels of Sir W. Y. baronet, then and there being found, feloniously did steal, take and drive away against the peace, &c. and against the form of the statute, &c. And the jurors, &c. do further present, that J. Y. late of &c. afterwards, that is to say, on, &c. with force and arms, at, &c. aforesaid, the said goods and chattels abovementioned, so as aforesaid feloniously stolen, taken, and driven away, feloniously did receive and have, (he the said J. Y. then and there well knowing the said goods and chattels abovementioned to have been feloniously stolen, taken and driven away,) against the peace, &c. and against the form of the statute, &c.

That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, five sheep, of the value of three pounds, of the goods and chattels\* of C. D. then and there being found, then and there wilfully and feloniously did kill, with a felonious intent to steal part of the carcasses, that is to say, the inward fat of the said five sheep, against the form of the statute, &c. and against the peace, &c.

That W. H. late of, &c. on, &c. with force and arms, at, &c. aforesaid, unlawfully did enter a certain stable, there situate, belonging to one W. W. and then and there unlawfully and injuriously did milk a certain cow, of and belonging to the said W. W. being in the said stable of him the

(x) See other precedents, Hand. Prac. 437. Cro. C. C. 442. Starkie, 440. As to the *offence*, see ante 932. Clergy is taken away by 14 Geo. II. c. 6. s. 1. explained by 15 Geo. II. c. 34; which extend to cases of outlawry as well as conviction, 4 T. R. 543. The *indictment* to deprive the offender of clergy must strictly pursue the acts which take it away. Thus if a prisoner be indicted for stealing a *cow*, and in evidence, it appears to be a *heifer*, or a *sheep* and it is shewn to be a *lamb*, he must be acquitted, as the statute specifies them distinctly, 1 Leach, 105. East P. C. 617. 4 Bla. Com. 240. n. 14. But if the carcasses of sheep are found in the owner's ground, and only the skins taken away, the offender may be indicted, not only for killing with intent to steal, but for larceny of the sheep; for there is a sufficient removal, 2 East P. C. 617. The indictment against the receiver may state that he received the mutton, after showing that the principal stole the sheep when living, 2 East

P. C. 617. As to the law relative to the receivers of stolen goods in general, and the proceedings against them, see ante 951.—*Rewards*. The 14 Geo. II. c. 6. s. 2. gives a reward of ten pounds to the party by whose information an offender against that act is apprehended and convicted, and directs that in case more than one person shall have a right to the reward, the judge shall direct what portion shall be paid to each claimant, in his certificate, by which payment is to be obtained from the sheriff.

(y) See precedents, Cro. C. C. 7th Ed. 698. 8th Ed. 442. Starkie, 440. see note to last precedent.

(z) See precedent, Cro. C. C. 7th Ed. 477. where it is felony to steal the animals themselves, it is also felony to steal any thing which they produce, 1 Leach, 171. So to pluck wool from the back of a sheep is felony, id. *ibid.*; but there must be an *animus furandi*, and a mere frolic will not amount to felony, id. *ibid.*



said W. W. and that he the said W. W. by such milking, did then and there draw and extract three quarts of milk of the value of three pence, from and out of the said cow ; and the said three quarts of milk, so drawn and extracted as aforesaid, of the goods and chattels of the said W. W. he the said W. H. then and there unlawfully and feloniously did steal, take and carry away, to the great damage of the said W. W. and against the peace, &c.

That J. J. late of, &c. on, &c. with force and arms, at, &c. feloniously did steal, take and carry away, (b) one letter, from and out of a certain bag of letters, then and there sent by the post, to wit, by the post from D. in the county of W. to A. in the county of\* W. &c. against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said J. J. on the said, &c. with force and arms, at, &c. aforesaid, feloniously did steal, take and carry away (b) one packet, (the said packet being then and there a letter, containing sundry bills of exchange) from and out of a certain other bag of letters, then and there sent by the post, to wit, by the post from, &c. aforesaid, to, &c. aforesaid, against the form, &c. and against the peace, &c. And the jurors, &c. do further present, that the said J. J. on the said, &c. with force and arms, at, &c. aforesaid, feloniously did steal, take and carry away, one packet from and out of a certain other bag of letters, then and there sent by the post, that is to say, by the post, from, &c. aforesaid, to, &c. aforesaid, against the form of the statute, &c. and against the peace, &c.

That A. B. late of, &c. on, &c. with force and arms, in

[\*979]

For a capital felony in stealing a letter containing bills of exchange, sent by the post, on 7 Geo. III. c. 50. s. 2. (a) First count for stealing a letter out of a bag. Second count for stealing a packet out of a bag containing bills of exchange. Third count for stealing a packet out of a bag. For a capital felony in stealing woollen cloth from the tenters, on 22 Car. II. c. 5. s. 3. (c)

(a) See other precedents, Cro. C. C. 8th Ed. 253. Cro. C. A. 286. Starkie 432. 2 Leach, 634. As to the offence, see ante 932. and see 52 Geo. III. c. 143. s. 3. At common law the venue must be laid in the county where the letters are taken from the mail, and, on this ground a person who had travelled the whole journey with that carriage, and it could not be ascertained in which county the property was actually stolen, was acquitted of the capital charge, and convicted on another indictment for simple larceny, 2 Leach, 634. In consequence of this decision, the 42. Geo. III. c. 81. s. 3. permits the prosecutor, in case of a stealing from the mail, to lay the venue either in the county where the offence was committed, or in that where the defendant was arrested. The 52 Geo. III. c. 143.

confirms the same privilege. In the description of the letter in the indictment, it is no variance to charge it as "to be delivered to persons using in trade the name and firm of Messrs. A. B. and C." when that term is never used by themselves, but frequently adopted in addressing them, and they have accepted bills directed to them with that addition, 2 East P. C. 605. As to this offence when committed by persons employed in the conveyance of letters, see post 987.

(b) These words are not in the statute ; but as they are necessary in describing a larceny at common law, it seems better to insert them, Cro. C. C. 8th Ed. 253, 4. Cro. C. A. 286. East. P. C. 576. Stark. 433.

(c) See a similar precedent, Starkie, 451. as to the offence, ante 933.

the night of the same day, to wit, about the hour of twelve of the night of the same day, at, &c. aforesaid, ten yards of woollen cloth called bocking, of the value of ten shillings of the goods and chattels of J. B. (the same cloth then and there being cut, and being on tenters for the drying thereof) feloniously did cut, steal, take and carry away from the said tenters, against the form of the statute, &c. and against the peace, &c. [*add a count for simple larceny.*]

For felony  
in stealing  
linen from  
a bleaching  
croft,  
on 18 Geo.  
II. c. 27.  
(d)

That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, thirty yards of linen cloth of the value of thirty shillings of the goods and chattels of C. D. of the parish, aforesaid, in the county aforesaid, whitster, then and there being laid, placed and exposed to be bleached and whitened in a certain bleaching croft of the said C. C. situate, lying and being of the parish aforesaid, in the county aforesaid, then and there made use of by the said C. D. for the bleaching and whitening of the same linen cloth, then and there being found, then and there in the same bleaching croft, (e) feloniously did steal, take and carry away, against the peace, &c. and against the form of the statute, &c.

## INDICTMENTS FOR LARCENY AND EMBEZZLEMENT.—PERSON BY WHOM COMMITTED.

[\*980]

For felony  
against a  
servant, in  
embezzling  
his  
master's  
goods delivered  
to him to  
keep for  
his master's  
use,  
on 21. Hen  
VIII. c. 7.  
(g)

That\* E. B. late of, &c. on, &c. then being a servant of

(d) See similar precedents, Cro. C. C. 7 Ed. 467. 3 Ed. 262. Starkie, 450. The 10 Geo. II. is repealed by 51 Geo. III. c. 41. but the offence remains as before, the punishment only is mitigated, see ante 933, 4.

(e) If in a field, describe it as in the act.

(g) See other precedents, 4 Wentw. 42. Cro. C. C. 440. Starkie, 427. By the 21 Hen. VIII. c. 7. "servants having casketa, jewels, money, goods, or chattels delivered to them by their masters or mistresses, safely to be kept to the use of their said masters or mistresses, and going away with the said casketa, &c. or any part thereof, to the intent to steal the same, and defraud their said masters or mistresses thereof, contrary to the trust and confidence to them put by their said masters or mistresses; or else being in the service of their said

masters or mistresses, if they embezzle the same casketa, &c. or any part thereof, or otherwise convert the same to their own use, with like purpose to steal it (if the said casketa, &c. be of the value of forty shillings, or above) then the same false, fraudulent, and untrue act or demeanour, shall be adjudged felony." But by s. 2. this act does not extend to apprentices, or any person within the age of eighteen years. Clergy is taken away from this offence by 27 Hen. VIII. c. 17. both acts are made perpetual by 28 Hen. VIII. c. 2. repealed by 1 Mary sess. 1. c. 1. s. 5. and the 21 Hen. VIII. c. 7. is revised and made perpetual by 5 Eliz. c. 10. s. 3. so that at this day the offence is a clergyable felony. The defendant must be servant at the time of the delivery and running away, Dyer, 5. Hawk. b. 1. c. 32. s. 12. Eas, P. C. 568. Bait. J. c. 58.

and to one A. B. and not an apprentice, ~~or~~ a person within the age of eighteen years, (*h*) the said A. B. did then and there upon confidence and trust, deliver unto the said E. B. his said servant, one gold watch of the value of twenty pounds, of the goods and chattels of him the said A. B. safely to keep the same to the use of him the said A. B. and that he the said E. B. after the said delivery, and whilst he was such servant as aforesaid, to wit, on the said, &c. with force and arms, at, &c. aforesaid, did feloniously withdraw himself, (*i*) from the said A. B. his said master, and feloniously did go away with the same gold watch, to the intent to steal the same, and defraud the said A. B. his said master thereof, contrary to the trust and confidence in (*j*) him the said E. B. put by\* the said A. B. his said master, against the form of the statute, &c. and against the peace, &c. [*Add a count for a common larceny, as ante 960.*] [#981]

That R. A. was an officer and servant of the governor and company of the bank of England, and as such officer and servant, was entrusted by the said governor and company, with certain effects belonging to the said governor and company; that is to say, a certain paper, partly printed and partly written, purporting to be a bill commonly called an exchequer bill, the tenor of which said paper, partly printed and partly written, is as follows, that is to say, [*setting forth a bill for five hundred pounds, No. 835, verbatim.*] which said paper was then and there belonging to the said governor and company, Against a cashier of the Bank of England for a capital felony in embezzling exchequer bills, on 15 Geo. II. c. 13. s. 12. (*k*)

(*h*) These words are unnecessary as the exception is not contained in the enacting clause 1 Sid 302. 2 Hale, 171 1 vol. 283. and cases there cited.

(*i*) If the servant does not withdraw himself but continues in his master's service, then say, "without the consent or commandment of the said A. B. his said master, feloniously did embezzle the same gold watch and convert the same to his own use, with intent, &c." And then proceed as above.

(*j*) In statute "*to.*"

(*k*) See the statute recited ante 936. This was the indictment against Aslett, on which he was found guilty. See the case, 1 N. R. 1. 2 Leach, 958. He was second cashier in the bank, and while in that capacity, embezzled exchequer bills to a very large amount, and converted them to his own use. He was first indicted under 15 Geo. II. c. 13. s. 12. for "feloniously secretly, embezzling, and stealing and carrying away certain exchequer bills; and in other counts

"certain bills commonly called exchequer bills," but it appeared on the trial, that the person who had signed the instruments in question had no legal authority so to do, and, therefore, though the legislature had interposed to render them valid the indictment was holden to be unsupported by the evidence, and the defendant was acquitted, 2 Leach, 954. He was, however, detained and indicted as above; when an objection was taken on his behalf that the supposed exchequer bills were not valuable effects within the meaning of the statute. He was found guilty. A majority of the judges thought the conviction proper. 2 Leach, 958. But as some of the judges differed, he was never executed, but kept for several years in Newgate, and then pardoned on condition of transportation for life. In his case it was holden, that the 15 Geo. II. was not repealed by 39 Geo. III. which makes similar offences single felony.

and of the value of five hundred pounds, and which said sum of five hundred pounds, in the said paper mentioned, was then and there unpaid and unsatisfied to the said governor and company the holders thereof, [*the indictment then set forth two other bills in like manner, No. 2,694, No. 1,061, each for 1000l.*] and that the said R. A. so then and there being such officer and servant of the said governor and company, and so entrusted as aforesaid with the said effects, so as aforesaid belonging to the said governor and company, did then and there, with force and arms, feloniously secrete, embezzle, and run away with the said affects, so as aforesaid belonging to the said governor and company, and of the value of 2,500l. against the form of the statute, &c. and against the peace, &c. [*The\* second count stated the effects to be "certain papers, and upon the credit whereof the said governor and company, &c. had advanced a large sum of money, to wit, &c." The third count stated the effects to be "certain papers, &c. purporting to be bills called exchequer bills,"—and there was another set of counts similar to the first, except in using the term securities instead of effects.*]

For a single felony against a clerk of country bankers for embezzlement, on 39 Geo. III. c. 85. (l)

That A. B. late of, &c. on, &c. at, &c. aforesaid, was clerk to

(l) This indictment was drawn by an eminent crown lawyer, and the defendant was convicted on it. See *other precedents* Cro. C. C. 8th Ed. 180. which is defective, 2 Starkie, 428. As the *offence*, see ante 918, 926. and 3 Bos. and Pul, 106. 2 Leach, 932. The *venue* may be laid in the county where the prisoner denied having received the money, though there is no other proof that he spent it there, or converted it there to his own use. 1 East, P. C. Addenda xxiv. It seems indeed to have been thought by some of the judges, that in such a case, he might be indicted either in the county where he received the money to the use of his master, or in that in which he denied the possession. But this could only be done where the design to embezzle can be shown to have preceded the receipt of the property; for how otherwise can any crime be charged in a jurisdiction, where the defendant only performed the duty with which he was entrusted? The *indictment* must contain all the requisites of an indictment for larceny at common law; for the statute has not made the species of embezzlement against which it is directed *co nomine* a distinct and

substantive felony, but merely enacts that money or goods taken into the possession of the servant to his masters's use and feloniously converted to his own, shall be deemed to be taken feloniously from the possession of the master; the offence continues a larceny, and consequently the terms of the act and the common description of stealing must be used in the proceedings, 2 Leach, 932. 3 B. & P. 106. This perhaps, might be more conveniently done than in the above precedents by blending the terms of the statute with the description of larceny in the same sentence, by charging the defendant "*did fraudulently and feloniously steal, take, carry away, embezzle and secrete*" the goods, &c. instead of putting the larceny as an inference from the embezzlement as is done in the above form. If the indictment omit to lay the property in the owner, it will be defective, 2 Leach, 922. 3 B. & P. 106. At the same time, the words of the act must be followed, or no judgment can be given, 2 East, P. C. 576. 2 Leach, 933. in notes. But a count may be added for simple larceny, Starkie, 431. n. (n.)

C. D. and E. F. of the same parish and county, bankers, and employed and entrusted by the said C. D. and E. F. to receive money for them, (*m*) and being such clerk so employed and entrusted as aforesaid, then and there by virtue of such employment and entrustment as aforesaid, he the said A. B. did receive and take\* into his possession a certain sum of money, to wit, the sum of ten pounds, (*n*) for and on the account of the said C. D. and E. F. his said masters and employers, and having so received and taken into his possession the said sum of money, for and on the account of his masters and employers, he the said A. B. then and there, with force and arms, fraudulently and feloniously did embezzle and secrete part of the said sum of money, to wit, the sum of 4*l.* 13*s.* And so the jurors aforesaid, do say, that the said A. B. did then and there, in manner and form aforesaid, feloniously steal, take and carry away from the said C. D. and E. F. his said masters and employers, the said sum of 4*l.* 13*s.* of the monies of the said C. D. and E. F. for whose use, and on whose account the same was delivered to, and taken into, the possession of him the said A. B. being such clerk so employed and entrusted as aforesaid, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B. afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, was clerk to the said C. D. and E. F. of the same parish and county, bankers, and G. H. of Eastham, J. K. and the aforesaid C. D. executors of the last will and testament of the late C. D. the elder, deceased, and employed and entrusted by them the said C. D. and E. F. bankers, and G. H. of Eastham, J. K. and the aforesaid C. D. executors of the last will and testament of the late C. D. the elder, deceased, his said masters and employers, to receive money of them, and being such clerk so employed and entrusted, at, &c. aforesaid, on, &c. aforesaid, by virtue of such employment and entrustment, he the said A. B. did receive and take into his possession, a certain sum of money, to wit, the sum of —*l.* for and on the account of the said C. D. and E. F. bankers, and G. H. of Eastham, J. K. and the aforesaid C. D. executors of the last will and testament of the late C. D. the elder, deceased, his said masters and employers, and having so received and taken into his possession the said sum of money, for and on the account

[\*983]

Second count, laying the property in the bankers and executors of a deceased partner.

(*m*) These words are not used in the precedent in Cro. C. C. 180, or Starkie, 428. They are contained in the preamble of the statute, and referred to by the words "such employment." An indictment has

been recently quashed for the want of them, and therefore, they have been retained here.

(*n*) In other precedents are sometimes here inserted "of the said C. D. and E. F."

[\*984] of his said masters and employers, he the said A. B. then and there, with force and arms, fraudulently and feloniously did embezzle and secrete part of the said sum of money, to wit, the sum of 4*l.* 13*s.* And so the jurors aforesaid, upon their oath aforesaid, do say, that the said A. B. did, on, &c. aforesaid, at, &c. aforesaid, in manner and form last aforesaid, feloniously steal, take and carry away\* from the said C. D. and E. F. bankers, and G. H. of Eastham, J. K. and the aforesaid C. D. executors of the last will and testament of the late C. D. the elder, deceased, his masters and employers, the sum of 4*l.* 13*s.* of the money of the said C. D. and E. F. bankers, and G. H. of Eastham, J. K. and the aforesaid C. D. executors of the last will and testament of the late C. D. the elder, deceased, his said masters and employers, for whose use, and on whose account, the same was delivered and taken into the possession of him the said A. B. being such clerk so employed and entrusted as last aforesaid, against the form of the statute, &c. and against the peace, &c.

The like  
in another  
form, for  
a single  
felony, on  
39 Geo.  
III. c. 85.  
against a  
servant  
for em-  
bezzling  
notes and  
money.  
(o)

That J. P. late of, &c. at, &c. at, &c. was servant to G. W. and was employed and entrusted by him the said G. W. to receive money for him, and being such servant so employed and so entrusted by him the said G. W. to receive money for him, then and there by virtue of such employment and entrustment as aforesaid, did receive and take into his possession eight shillings in monies numbered, and one promissory note for the payment of the sum of five pounds, and of the value of five pounds, and two bank notes for the payment of the sum of one pound each, of the value of one pound each, for and on account of the said G. W. his said master and employer, and afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, fraudulently and feloniously did embezzle and secrete the said eight shillings in monies numbered, and the said promissory note and bank notes. And so the jurors, &c. do say the said J. P. did then and there, in manner and form aforesaid, feloniously steal, take and carry away from the said G. W. the said eight shillings in monies numbered, and the said promissory note and bank notes, the said eight shillings in monies numbered being the monies, and the said promissory note and bank notes being the property of the said G. W., the master and employer of the said J. P., for whose use and on whose account the said monies, promissory notes, and bank notes, were delivered to and taken into the possession of him the said J. P. so entrusted and so employed as aforesaid, and the said sums of money payable and secured by and upon the said promissory notes

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(o) This indictment was settled by an eminent crown lawyer.



being then, to wit, at the time of committing the felony, due and unsatisfied to the said G. W. the proprietor thereof, against the form of the statute, &c. and against the peace, &c. [*Add a count for stealing money and promissory notes, as ante 960. 968. on 2 Geo. II. c. 25. and a third for simple larceny, in stealing the money only.*]

That\* W. J. late of, &c. on, &c. at, &c. aforesaid, was clerk and servant to M. G. widow, and employed and entrusted by her the said M. G. to receive money, goods, bills, notes, and other valuable securities for and on account of her the said M. G. and being such clerk and servant so employed and entrusted as aforesaid, he the said W. J. then and there did receive and take into his possession of and from one R. D. one bank note, for the payment and of the value of ten pounds, one other bank note for the payment and of the value of five pounds, one other bank note for the payment and of the value of two pounds, and three other bank notes for the payment of one pound each and of the value of three pounds, for and on the account of the said M. G. his mistress and employer, and having so received and taken into his possession the said bank notes for and on the account of his said mistress and employer, he the said W. J. then and there, with force and arms, fraudulently and feloniously did embezzle and secrete the same. And so the jurors, &c. do say that the said W. J. then and there in manner and form aforesaid, feloniously did steal, take and carry away from the said M. G. his said mistress and employer, one bank note, for the payment and of the value of ten pounds, one other bank note for the payment and of the value of five pounds, one other bank note for the payment and of the value of two pounds, and three other bank notes for the payment of one pound each, and of the value of three pounds, the said bank notes being the property of the said M. G. and the several sums of money payable and secured by and upon the said bank notes being then due and unsatisfied to the said M. G. the proprietor thereof, for whose use and on whose account the same were delivered to and taken into the possession of him the said W. J., being such clerk and servant so employed and entrusted as aforesaid, against the form of the statute, &c. and against the peace, &c. (*Second count laying the property as before, for embezzling 20l. generally. Third and Fourth counts answering to the first and second, laying the property in both the widow and the executors.*)

That on, &c. at, &c. aforesaid, one G. S. did deposit a certain bill of exchange for the payment of money, to wit, the

[\*985]

For a single felony, on 39 Geo. III. c. 25. for embezzling 20l. the property of a widow, and her husband's other executors.

(p) First count for embezzling bank notes, laying the property in the widow.

For a misdemeanour, on 52 Geo. III. c. 63. against a bill broker, for

(p) This was the indictment against Jackson, settled by an eminent crown lawyer. In this case, the exact amount of the notes paid could not be proved, only that the

payment was in bank bills; therefore as the sum was 20l. the indictment states one of 10l., one of 5l., one of 2l., and three of 1l. so that one or other of this amount might

embezzling a bill delivered to be discounted.

(g)

[\*986]

Second count.

sum of two hundred\* and fifty-nine pounds seven shillings and sixpence, the same being a security for monies and the property of him the said G. S. and of the value of two hundred and fifty-nine pounds seven shillings and sixpence, with one W. F. as agent for him the said G. S. upon and for a certain special purpose, without any authority either general, special, conditional, or discretionary, to sell or pledge such bill of exchange, that is to say, upon and for the special purpose that the said W. F. should cause and procure the said bill of exchange to be discounted for and pay the proceeds thereof to him the said G. S.; and that the said W. F. late of, &c. not regarding his duty in that behalf, afterwards, to wit, on, &c. aforesaid, with force of arms, at, &c. aforesaid, did unlawfully negotiate and apply to his own use and benefit the said bill of exchange, in violation of good faith, and contrary to the said special purpose for which the said bill of exchange had been deposited with him as aforesaid, with intent to defraud the said G. S. the owner of the said bill of exchange, and the person who deposited the same as aforesaid, to the great damage of the said G. S. against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further

be paid, which was held by Le Blanc and Baily, justices, to be good, because stealing any one will constitute the crime of larceny.

(g) This indictment, settled by an eminent crown lawyer, is founded on the first section of 52 Geo. III. c. 63. passed in consequence of the opinions of the judges in Walsh's case, 4 Taunt. 258. 2 Leach, 1054. see ante 922. By that provision, it is enacted "That if any person with whom (as banker merchant, broker, attorney, or agent of any description whatsoever,) any ordnance, debenture, exchequer bill, navy, victualling, or transport bill, or other bill, warrant, or order for the payment of money, state lottery ticket, or certificate, seaman's ticket, bank receipt for payment of any loan, India bond, or other bond, or any deed, note, or other security for money, or for any share or interest in any national stock or fund of this or any other country, or in the stock or fund of any corporation, company, or society established by Act of Parliament or royal charter, or any power of attorney for the sale or transfer of any such stock or fund, or any share or interest therein, or

any plate, jewels, or other personal effects shall have been deposited, or shall be or remain for safe custody, or upon or for any special purpose, without any authority either general, special, conditional, or discretionary, to sell, pledge, or transfer such debenture, &c. shall sell, negotiate, transfer, assign, pledge, embezzle, secrete, or in any manner apply to his own use or benefit any such debenture, &c. in violation of good faith, and contrary to the special purpose for which the things herein before mentioned, or any or either of them shall have been deposited, or shall have been or remained with or in the hands of such person, with intent to defraud the owner of any such instrument or security, or the person depositing the same, or the owner of the stock or fund, share, or interest, to which such security or power of attorney shall relate," he shall be deemed guilty of a misdemeanour, and punished with transportation for any term not exceeding fourteen years, or undergo any other punishment as the court, in misdemeanours in general have discretion to inflict.

present, that the said W. F. with whom on the said, &c. at,\* [\*987]  
 &c. aforesaid, as agent for the said G. S. a certain bill of ex-  
 change for the payment of money, to wit, the sum of two hun-  
 dred and fifty-nine pounds seven shillings and six pence, the  
 same being a security for money, and the property of the said  
 G. S., and of the value of two hundred and fifty-nine pounds  
 seven shillings and sixpence, was upon and for a certain spe-  
 cial purpose to wit, for the special purpose of causing and  
 procuring the said last mentioned bill of exchange to be dis-  
 counted for and to pay the proceeds thereof to him the said  
 G. S., without any authority, either general, special, condi-  
 tional, or discretionary, to sell or pledge such last mentioned  
 bill of exchange, did then and there, to wit, on the said, &c.  
 with force and armes, at, &c. aforesaid, unlawfully, negoti-  
 ate and apply to his own use and benefit, such last mentioned  
 bill of exchange, in violation of good faith, and contrary to  
 the special purpose last aforesaid, for which the said last men-  
 tioned bill of exchange then was in the hands of the said W.  
 F., with intent to defraud the said G. S. the owner of such  
 last mentioned bill of exchange, to the great damage of the  
 said G. S., &c. against the form of the statute, &c. and  
 against the peace, &c.

That J. M. late of &c. on, &c. was a letter carrier employ- For a ca-  
 ed in carrying letters and packets from the General Post Of- pital felo-  
 fice, situate, &c. to a certain street called Charlton street, in ny, on 7  
 Mary-le-Bone, in the county of Middlesex, and that on, &c. Geo. III. c.  
 aforesaid, at and in the said General Post Office, two certain 50. against  
 letters then lately before sent by W. C. by the post from S. in a letter  
 the county of B. and directed to C. Q. of Charlton street, carrier for  
 in the parish of Mary-le-Bone, in the county of M. secreting  
 then containing therein a certain bank note, marked No. letters  
 1967, dated London, 9th February, 1792, signed and containing  
 subscribed by G. C. for the governor and company of the a bank  
 bank of England, promising to pay one Abraham Newland note. (r)  
 or bearer on demand, the sum of 10*l.* the tenor of which, &c.  
 which said two letters\* had come to the hands and posses- [\*988]

(r) This was the indictment a-  
 gainst Moore, on which he was con-  
 victed. His case was that of steal-  
 ing two letters, each containing half  
 a bank note; and he was indicted  
 as above, and the conviction holden  
 valid, 2 Leach, 575. See *other prece-*  
*dents*, 3 Bos. and Pul. 311. 2 Bla. Rep.  
 789. As to the offence, see ante 932.  
 The *indictment* must follow the words  
 of the statute. In the description of  
 the securities it will suffice to use  
 the terms of the act, as is in case  
 of stealing choses in action in an  
 ordinary way, 2 Leach, 1103. And

it has been holden, that a draft  
 drawn in the country on a bank-  
 er in London, sent by post, may  
 be laid as a *warrant* for the pay-  
 ment of money, 1 Leach, 225, 6. in  
 notes. But a defendant described  
 as a "charger and sorter of letters,"  
 cannot be convicted on counts, cal-  
 ling him generally a *person employ-*  
*ed in the post office* though it seems  
 if he appeared to be a *sorter* only  
 the jury might find him guilty *as*  
*such*, by a special finding, 2 Bla.  
 Rep. 789. 1 Leach, 79.

sion of the said J. M. then and there being a letter-carrier so employed as aforesaid, to be by him the said J. M. as such letter-carrier delivered, &c. and that he being, &c. and having the said two letters containing the said bank note in his hands and possession, feloniously did secrete the said letters, then and there containing the said bank note, contrary to the form of the statute, &c. and against the peace, &c. [*The second count laid the property in C. Q., a third and fourth count called the letters two certain packets, laying them respectively to be the property, first of W. C., second of C. Q. There were four other counts, alledging in the singular number a certain letter, a certain packet, the property of W. C. and C. Q. respectively.*]

For a single felony on statute 3 and 4 of W. & M. c. 9. s. 5. for stealing goods let by contract to be used with a lodging. (s)

Middlesex, (to wit.) That S. V. late of, &c. widow, on, &c. with force and arms, at, &c. aforesaid, one flaxen sheet of the value of six shillings, and two brass candlesticks of the value of three shillings, of the goods and chattels, of one F. S. (the same goods and chattels being in a certain lodging room in the dwelling house of the said F. S. there situate, let by contract by the said F. S. to the said S. V., and to be used by the said S. V. with the lodging aforesaid,) then and there being found, feloniously did steal, take and carry away, against the form of the statute, &c. and against the peace, &c.

## INDICTMENTS FOR LARCENY IN PARTICULAR PLACES.

For stealing a bill of exchange in the dwelling house of M. G. widow, in one count, and of M. G. and her husband's other executors in another, on 12 Ann. stat. 1. c. 7. (s)

That W. J. late of, &c. on, &c. with force and arms, at, &c. aforesaid, in the dwelling house of M. G. widow, fe-

(s) See other precedents, Cro. C. C. 263. Cro. C. A. 111. Starkie, 431. 1 Leach, 336. 2 Leach, 545, 588, 680. As to the offence, see ante 939, 940. In the indictment two persons cannot be joined, unless the lodgings were let to them by a joint contract, 2 Leach, 545. It is absolutely requisite correctly to state by whom the lodgings were let, 1 Leach, 336. But evidence that they were let by the wife, will sustain an allegation that they were let by the husband, for she is regarded as his agent, 2 Leach, 705. (3rd. Ed. omitted in the 4th.) Where the indictment charged the defendant with stealing of T. N. certain arti-

cles of furniture therein specified, "the same goods and chattels being in a certain lodging room in the dwelling house of the said T. N. there situate, let by contract by the said T. N. to the defendant, and to be used by the defendant with the lodging aforesaid," the proceedings were holden sufficient, without any further averment of a subsisting contract at the time the goods were stolen, 2 Leach, 588.

(s) This indictment against Jackson (see another indictment against him ante 985.) was settled by an eminent crown lawyer. See other precedents—For stealing a bank note, 2 Leach, 564. several articles, Cro.

loniously did steal,\* take and carry away one bill of exchange, for payment of the sum of thirty-three pounds eleven shillings, and of the value of thirty-three pounds eleven shillings, the said bill of exchange at the time of committing the felony aforesaid, being the property of the said M. G., and the said sum of thirty-three pounds eleven shillings payable and secured by the same bill of exchange being then due and unsatisfied to the said M. G. the proprietor thereof, against the form of the statute, &c. (u) and against the peace, &c. [*Second count like the first, only laying the property in the widow and the executors.*]

One silver watch of the value of forty shillings, of the goods and chattels of one E. F. in the dwelling-house of him the said E. F. then and there being found, then and there feloniously did steal, take and carry away, against the peace, &c.

That H. C. late of, &c. W. N. of, &c. and C. C. late of, &c. on, &c. with force and arms, at, &c. aforesaid, one diamond ring of the value of five pounds five shillings, one pearl ring of the value of one pound ten shillings, one pair of gold bracelets with amethyst snaps, of the value of five pounds, one bracelet with an opal snap set with brilliants of the value of two pounds two shillings, one other bracelet with a zaphire snap, of the value of two pounds two shillings, one other bracelet with a ruby snap of the value of two pounds two shillings, one gold chain of the value of ten pounds ten shillings, twelve yards of poplin of the value of three pounds three shillings, one miniature picture of the value of two-pence, twelve pair of gloves of the value of twelve shillings, and three shifts of the value of twelve shillings, of the goods and chattels of Thomas Brudenell Bruce, earl of Aylesbury, and two silver spoons of the value of — and a pair of silver sugar tongs of the value — of the goods and chattels of Sarah 'Knapp, in the dwelling-house of the said Thomas Brudenell\* Bruce, earl of Aylesbury, then and there being found, feloniously did steal, take and carry away, against the form of the statute, &c. and against the peace, &c.

That R. P. late of, &c. on, &c. about the hour of nine in

[\*989]

The like  
in a com-  
mon form.  
(v)

Against  
several  
persons  
for a capi-  
tal felony.  
on 12 Ann.  
stat. 1. c.  
7. s. 1. for  
stealing  
various ar-  
ticles in a  
dwelling-  
house. (w)

[\*990]

On 39  
Eliz. ch.  
15. for a

C. C. 236. Cro. C. A. 28. Starkie, 443. and see an indictment on this act, and 3 & 4 W. and M. c. 9. 4 Wentw. 52. As to the offence, see ante 939, 940. we have seen that the stealing a *bank note* is within the statute, as having by 2 Geo. II. c. 25. been made a valuable property in respect of which larceny may be committed, and promissory notes, bills, and other securities rest on the same principle, 2 Leach, 693. The indictment must state correctly the

name of the owner of the dwelling house, in which the property is stolen, 1 Leach, 252, 338, 9.

(u) This is not necessary, as the statute only takes away clergy and does not create the offence, but it seems to be most usual and proper, and can in no case vitiate, 2 Hale, 190. 1 Vol. 290.

(v) See last precedent and notes.

(w) This indictment was settled by an eminent crown lawyer.



capital felony in breaking into a dwelling-house in the day time, no person being therein, and stealing to the amount of 5*s.* (x) For capital felony, stealing in a shop, coach-house, &c. to the value of 5*s.* 10 and 11 W. III. c. 23. s. 1. (b) On 3 and 4 W. & M. c. 9. s. 1. for a capital felony in breaking into a house in the day time some person being therein, and putting him in fear. (e)

[\*991]

the (y) forenoon of the same day, with force and arms, at, &c. aforesaid, the dwelling-house of one J. S. there situate, feloniously did break and enter, (no person in the same dwelling-house then and there being,) and one pair of gloves and one pair of pincers of the goods and chattels of the said J. S. of the value of five shillings, of lawful money of Great Britain, and also a certain sum of money, (z) to wit, the sum of five shillings and six pence, of the monies, goods, and chattels of one J. S., of the value of five shillings of the like lawful money, in the same dwelling-house then and there being found, then and there feloniously did steal, take and carry away, against the form of the statute, (a) &c. against the peace, &c. [*Second count laying the property stolen to belong to another person.*]

That S. D. late of, &c. on, &c. with force and arms, at, &c. aforesaid, one cloth coat of the value of fifteen shillings, and one cloth waistcoat of the value of ten shillings, of the goods and chattels of one J. B. in the *shop* (c) of him the said J. B. then and there being found, then and there privately and feloniously did steal, take and carry away, against the form of the statute, &c. (d) and against the peace, &c.

That A. O. late of, &c. on, &c. at the hour of—in the afternoon of the same day, with force and arms, at, &c. the dwelling-house of one A. J. there situate, (one B. J. wife of the said A. J., in the same house, in the peace of God and of our said lord the king\* then being,) feloniously did break and enter, and one silver spoon of the value of — of the goods and chattels of him the said A. J. then and there feloniously did steal, take and carry away, and her the said B. J. then and there being in the said dwelling-house, then and there in bodily fear and danger of her life feloniously did put, (f) against the form of the statute, &c. and against the peace, &c.

(x) See other precedents, Cro. C. C. 7th Ed. 237. 8th Ed. 91. Burn, J. Larceny, xi. 2 Leach, 567. 2 East, 639. As to the *offence*, see ante 941. The *indictment* to oust the offender of clergy, must pursue the language of the statute. It must, therefore, be laid in the indictment and proved in evidence, that no person was within the house at the time the larceny was committed 2 East, P. C. 640.

(y) Or “afternoon,” &c. according to the fact.

(z) Or “and 13 pieces of the current gold coin of this realm called guineas, of the value of 13*l.* 13*s.* of the monies of the said J. S. in the same dwelling-house, then

and there feloniously, &c.

(a) See ante 989. n. u. This conclusion is not necessary, but will not prejudice.

(b) See other precedents, Cro. C. C. 446. Starkie, 443. Burn J. Larceny, xi. As to the offence, see ante, 942.

(c) If the stealing be from a coach-house, warehouse, or stable, say “in the coach-house,” &c. according to the fact.

(d) See ante 989. n. u.

(e) See a similar precedent, Burn, J. Larceny, xi. Starkie, 444. As to the offence, &c. see ante 943.

(f) This does not appear to be requisite when there is a breaking.



That A. B. late of, &c. labourer, on the — day of — in the — year of the reign of, &c. with force and arms, at, &c. aforesaid, one silver tea pot, of the value of forty shillings of the goods and chattels of one E. H. in the dwelling house of her the said E. H. there situate, then and there found and being, feloniously did steal, take and carry away, and her the said E. H. then and there being in the said dwelling-house, did then and there put in bodily fear of her life, against the peace, &c. and against the form of the statute, &c. And the jurors, &c. do further present, that the said A. B. on the said, &c. with force and arms, at, &c. aforesaid, feloniously did comfort, aid, abet, assist, counsel, hire and command certain persons, to wit, one J. M. and divers other persons to the jurors aforesaid at present unknown, feloniously to take away one silver tea pot, of the goods and chattels of the said E. H. then and there being found in the dwelling-house of the said E. H. there situate, and also to put in bodily fear of life, her the said E. H., then and there being in the said dwelling-house, and which said last mentioned goods and chattels being of the value aforesaid, in the said dwelling-house, they the said J. M., and the said other persons at present unknown to the jurors aforesaid, in pursuance of such the said comforting aiding, abetting, counselling, hiring and commanding of the said A. B. feloniously did then and there take away, and her the said E. H. then and there being in the said dwelling-house, did then and there put in bodily fear of her life, against the peace, &c. and against the form of the statute, &c.

Middlesex,\* to wit. That A. B. late of, &c. and C. D. late of, &c. on, &c. with force and arms, at, &c. aforesaid, one

On 3 & 4 W. & M. 1 c. 9. for a capital felony in stealing in a dwelling house, and by putting in fear the owner being therein, but without breaking.

(g) First count as principal Second count against the defendant as a-bettor and procurer.

[\*992]

For a capital felony in stealing from a church.

(h)

as that completes the robbery ; but, in order to oust the offender of clergy, it is necessary to allege a breaking, and an actual larceny, some person being in the house at the time, 1 Hale, 522. 2 Hale, 354. East, P. C. 634. 2 Leach, 671.

(g) See *other precedents*, 4 Wentw. 52. Starkie, 444. 2 Leach, 671. As to the offence, see ante 943, no breaking is necessary under this clause, as no putting in fear is requisite on the other. But the *indictment* must expressly allege a putting in fear *by the prisoner*, and it will not suffice to pursue the words of the statute, and state that the defendant stole the goods in the dwelling of the owner, he being therein and put in fear, 2 Leach 671. The defendant may, however, on such a defective indictment, be convicted

of simple larceny, 2 Leach, 671.

(h) See precedent Cro. C. A. 178. Cro. C. C. 435. 2 Starkie, 448. 445. and see ante 949. and see post for sacrilegious burglary, for sacrilege or robbery in a church, and for taking away two communion cups, two copes of black velvet, and three surplices, West, 197, it concludes contra form, and avers the offender to be a layman and not in holy orders, it is framed on the 23 Hen. VIII. whereby clergy is taken from all persons not actually in holy orders. A similar indictment for robbing a church of several articles, West. 236. Indictment for robbing a church in the night time, stating the offence to be *burglariously*, but not stating it to be *sacrilegiously*, and not concluding contrary to the form of the statute, see West, 196.

silver cup, of the value of six pounds, of the goods and chattels of the parishioners of the said parish, (in the custody of E. F. and G. H. then church wardens of the same parish,) in the church of the parish aforesaid, then and there being found, then and there feloniously and sacrilegiously did steal, take and carry away, against the form of the statute, &c. and against the peace, &c.

## INDICTMENTS FOR LARCENY, FROM THE PERSON.

For a single felony on '48 Geo. III. c. 129. for stealing from the person. (i)

That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, one silver watch with a silver chain, of the value of four pounds, of the goods and chattels of one C. D. from the person of the said C. D. then and there feloniously did steal, take and carry away, against the form, &c. and against the form, &c.

## INDICTMENTS FOR SOLICITATIONS TO STEAL AND EMBEZZLE.

Indictment for soliciting servant to embezzle his master's goods. (k) [\*993]

That A. B. late of, &c. on, &c. at, &c. aforesaid, did falsely, wickedly and unlawfully, solicit and incite one J. D. a servant of J. P.\* late of, &c. to take, *embezzle* and steal a quantity of twist, of the value of three shillings, of the goods and chattels of his master the said J. P. to the great damage, &c. to the evil example, &c. and against the peace, &c.

See also an indictment for robbing a church merely, without noticing it as sacrilege, burglary, or felony, but only stealing goods from thence, alleged to be the property of the *parishioners* at large, West, 271. As to the offence, see ante 949. The *indictment* lays the property in the parishioners, in the custody of the church-wardens of the time, which appears to be correct, 1 Hale, 512. 3 Campb. 264, 5. It might, however, with equal propriety be laid in the rector, 2 East, P. C. 651. In other respects, the averments are similar to those in an indictment for larceny at common law.

(i) See similar precedents, Cro. C. C. 246. Burn J. Larceny, Starkie, 448. As the Act on which this

indictment is founded repeals the 8 Eliz. c. 4. by which privately stealing from the person was made capital, it is unnecessary to give any precedents on that statute, see ante 944.

(k) See other precedents, Cro. C. C. 455. 2 East Rep. 5. Starkie, 639. See ante 235, 317, 8. as to solicitations in general. It is held a misdemeanour to incite another to the commission of any indictable offence, though the solicitation does not succeed, 2 East Rep. 5. It is therefore, unnecessary to aver in the indictment, that the persuasions were successful. But *quære* if the indictment should not charge that the defendant solicited the third person "*feloniously*," &c.

That J. B. late of, &c. on, &c. at, &c. aforesaid, falsely, subtly, and unlawfully did solicit, incite, and persuade one J. N. an apprentice to W. K. of the same parish and county, baker, secretly and clandestinely to take and embezzle divers goods and chattels of the said W. K. and to give and deliver such goods and chattels to him the said J. B. And that the said J. B. afterwards, to wit, on the said, &c. at, &c. aforesaid, three bushels of flour, of the value of fifteen shillings, of the goods and chattels of the said W. K. by the said J. N. then lately before, on the same day and year aforesaid, by the solicitation, incitement, procurement and persuasion of the said J. B. taken and embezzled, then and there falsely, knowingly, subtly and unlawfully did receive, obtain and have of, and from the said J. N. to the great damage of the said W. K. to the evil example, &c. and against the peace, &c.

For enticing an apprentice to embezzle his master's goods.

## INDICTMENTS FOR CHEATS AND FRAUDS.

### PRELIMINARY NOTES. (a)

#### *Offence at Common Law.*

Whatever\* doubts might have been entertained from the confusion of the earlier cases, it seems now to be settled, that at common law, no mere fraud, not amounting to felony, is an indictable offence, unless it affects the public. Hawkins, indeed, defines this offence to consist "in defrauding or endeavouring to defraud another of his known right by means of some artful device." Hawk. b. 1. c. 71. s. 1. which would include a variety of these injuries, of which an action on the case for damages is now the invariable mode of obtaining redress. But where a brewer was indicted for fraudulently delivering a less quantity of beer to a purchaser for a larger, Lord Mansfield observed, that "an offence, to be indictable, must be such an one as affects the public," and he instanced the use of false weights and measures in the general course of dealing—fraud by means of false tokens—and conspiracy to cheat, which is, in itself, a substantive crime. 2 Burr. 1125. In this case also, the whole court held unanimously, that no indictment would lie for the offence proved on the defendant. The same principles were subsequently laid down by Mr. Justice Buller, 3. T. R. 104. So where a miller converted to his own use corn sent to him to

Offence of cheating and fraud, at common law. [\*994]

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(a) Hawk. b. 1. c. 71. Burn, J. Bac. Abr. Fraud, E. Cheat, Williams, J. False Pretences.

[\*995]

grind, it was decided that no indictment would lie against him, but the proper remedy was by action of trover. 2 Stra. 793. Nor will the case be altered, though the fraud is backed by a false assertion, as a declaration that bad measure is correct, or that a commodity is of a different quality from that which in reality it possesses. Or if a man demand a debt in the name of another, producing no voucher to support his claim. 1 Salk, 379. 1 East, Rep. 185.—or if a person obtain goods from a tradesman by pretending to be sent by a customer. 2 Stra. 866. And it has even been holden that, at common law, no indictment will lie for giving a check in payment on a banker with whom the party has no effects. 2 Leach, 647.\* The cases in which fraud is indictable at common law, seem confined to the use of false weights and measures—the selling goods with counterfeit marks—playing with false dice—and frauds affecting the course of justice, and immediately injuring the interests of the public or the crown. Forgery and conspiracy are distinct offences—the former rendered capital in a variety of cases by statute—and the latter resting on principles with which fraud is only incidentally connected. See post.

The first three of the above class of cases seem to come under the denomination of *false tokens*, often used in the old authorities. They seem to depend on the principal that they betoken a general intent to defraud, and support the rule laid down that the injury must be to the public. Thus the selling wrought gold under the sterling alloy is not an indictable offence—it is but a single act—and is not accomplished by any means which shew a general system of fraud. Cowp. 323. Where, on the other hand, there is a counterfeit mark put on goods, to make those of an inferior seem to be of higher quality, the offender may be indicted. Trem. P. C. 103. 6. Selling by *false* measure is an indictable offence, selling *under* measure is ground only for a civil action. Cowp. 324. The selling of bad wine, pretending it to be good, has been holden indictable. 2 Lord Raym. 1179; but Lord Ellenborough has suggested that this was a case of conspiracy, or is to be supported on the ground only that the wine sold was *unwholesome*. 6 East, 133. Using false dice is an indictable offence at common law, as a common gamester is a public nuisance. 2 Rol. Abr. 78. Cro. Jac. 497, ante 681. and the legislature have by 16 Car. 2. c. 7. and 9 Ann. c. 14. further punished it with pecuniary forfeiture. See ante 681. And all frauds affecting public justice or the crown, are regarded as criminal. Thus, personating bail, and pretending to be an object of relief at a public asylum, are indictable offences. The former is by 4 W. and M. c. 4. s. 4. made a clergyable felony. So if the captain and purser of a man of war, deliver

to the commissioners for victualling the navy a false bill of exchange, false accounts, certificates and vouchers, they may be indicted for an offence against the interests of the public service. 4 East, Rep. 171, 2. The supplying prisoners of war with unwholesome food on a contract is criminal, as we have already seen as an offence against the public health. 6 East, 133, 6. ante 556. It seems also that an indictment will lie against a clergyman for embezzling and misapplying money, collected on a brief for the relief of sufferers by fire. 1 Bla. Rep. 443. sed quære. And if an apprentice enlist in order to obtain the bounty money, knowing that he must be discharged as incompetent to serve, he is guilty of a misdemeanour at common\* law. 1 Leach, 174. On the trial for this offence, the indenture must be proved by one of the subscribing witnesses. id. ibid. [\*996]

## 2. Offence by Statute.

The common law being inadequate to the punishment of many cases of highly injurious fraud, it was provided by the 33 Hen. VIII. c. 1. after reciting "that many light and evil disposed persons, not minding to get their livings by truth, according to the laws of this realm, but compassing, and devising daily how they may unlawfully get into their hands and possession, goods, chattels and jewels of other persons, for the maintenance of their unthrifty living, and also knowing, that if they come to any of the same goods, chattels and jewels by stealth, that then they, being thereof lawfully convicted according to the laws of this realm, thall die, therefore, have now of late falsely and deceitfully contrived, devised and imagined, *privy tokens and counterfeit letters in other mens' names* under divers persons, their special friends and acquaintances, for the obtaining of money, goods, chattels and jewels of the same persons, their friends and acquaintances; by colour whereof the said light and evil disposed persons, have deceitfully and unlawfully obtained and gotten great substance of money, &c. into their hands and possession, contrary to right and conscience," enacts "that if any person falsely and deceitfully obtain or get into his hands or possession any money, goods, chattels, jewels, or other things of any other person, by colour, and means of any such false token or counterfeit letter, made in any other man's name as is aforesaid, that then every person so offending, and being thereof lawfully convicted, by witnesses taken before the Lord Chancellor of England, for the time being, or by examination of witnesses, or confession taken in the Star

Offence of  
cheating  
and fraud  
by sta-  
tutes.

chamber at Westminster, before the king's most honourable council, or before the justices of assize in their circuits for the time being, or before the justices of peace within any part of the king's dominions in their general sessions, or by action in any of the king's courts of record, shall have and suffer such correction and punishment, by imprisonment of his body, setting upon the pillory or otherwise, by any corporal pain, (except pain of death) as shall be unto him limited, adjudged, or appointed by the person before whom he shall be so convicted of the said offences, or of any of them."

[\*997] The effect of this statute seems to be, to make a fraud on an individual by means of privy tokens, a misdemeanour, whereas, at common law, we have seen that the deceit must affect the\* public interests. And, therefore, where it is said this act created no new offences, but only enhanced the punishment of such as previously existed, it must be understood of "counterfeit letters," which were always indictable as forgeries. 2 Ld. Raym. 1466. Some difficulty has arisen as to what shall be considered as a *token*. It is clearly not a mere affirmation or promise, but must be something real and visible—as a ring, a key, or a writing. And even a writing would not suffice, except it was in the name of another, or so framed as to afford more credit than the mere assertion of the party defrauding, 2 East, P. C. 689. It does not extend to cases where a man procures goods on his own account, with intent to steal them, *id. ibid.* So letters declaring a falsehood with intent to defraud are not privy tokens within the statute. 2 Burr. 1128. And we have seen, that at common law, it was holden that the obtaining of property, by giving a check on a banker, where the party had no account, is not an indictable fraud. 6. T. R. 565. But, the reverse has been recently holden on a case precisely similar, on the statute 30 Geo. II. c. 24. 3 Campb. 370.

To supply the defects of 33 Hen. VIII. which we have seen would not apply to any *verbal* representation, the 30 Geo. II. c. 24. s. 1. enacts "That all persons who knowingly and designedly by false pretence or pretences shall obtain from any person or persons money, goods, wares or merchandizes, with intent to cheat or defraud any person or persons of the same, shall be deemed offenders against law and the public peace, and the court before whom such offenders shall be tried shall, on conviction, order them to be fined and imprisoned, or to be put in the pillory, or publicly whipped, or to be transported for seven years as the court shall think fit." The second section empowers any justices of the peace to bail or commit a person accused before them till the next sessions or assizes, and to bind over the witnesses to prosecute in such sum as he may think reasonable, not less than



double the value of the property if it exceed twenty pounds. The 20th section provides that no certiorari shall be allowed to remove any indictments under this statute. The term "*false pretences*" used in this act is very general; it includes every expression used in 33 Hen. VIII. and further includes every extortion of money or goods with an intent to defraud; 3 T. R. 103. and, therefore, it will not avail the defendants that the pretence consists in a false representation of something to take place at a future time, as that a bet had been laid that a certain pedestrian feat would be performed, for it is equally within the intention of the statute 3 T. R. 98. so if a man be\* authorised to inspect and pay a number of journeymen, and to draw on the clerk of the masters for the amount of the sums earned, and he delivers in a false account and draws on the clerk for the amount which he obtains, he will be guilty under the statute; as he would never have obtained the credit, unless he had delivered his fictitious estimate, 2 East, P. C. 830. And if a carrier obtains money by pretending to have delivered goods and to have lost the receipt given him by the person to whom they were directed, he may be indicted for the statutable offence, 2 East Rep. 30. So if a person procure a tradesman to sell him goods as for ready money, direct him to send his servant with them to his lodgings, and then deliver fabricated bills in payment, retaining the goods, though he cannot be prosecuted for felony in stealing them, he may be found guilty of obtaining them by false pretences, 2 Leach, 614. But the acts both of 33 Hen. VIII. and 30 Geo. II. are confined to money, goods and chattels, and do not, at least in words, extend to securities and choses in action; and therefore the 52 Geo. III. c. 64. extends the provisions of the latter act to bonds, bills of exchange, bank notes, all securities and orders for the payment of money, or the transfer of goods or any valuable thing whatsoever. The summary, therefore, of the law on this subject seems to be, that at common law, those cheats only were indictable which affected the public at large; that the 33 Hen. VIII. made all such frauds on individuals criminal as were effected by privy tokens, and by which either money or goods were obtained; that the 30 Geo. II. c. 24. extended the means of deceit thus made indictable to every kind of false pretences, by which money, goods and chattels, were obtained; and that the 52 Geo. III. finally rendered every description of fraud by *false pretences* criminal, whatever kind of valuable property the deception was intended to obtain.

[\*998]

There are some other statutes respecting particular persons and kinds of property which have been for the most noticed as forming a species of larceny. Among these are frauds

by lodgers, manufacturers, servants of public companies, persons employed in the post office, and the embezzlement of naval stores, or improperly having them in possession. Besides these the 13 Eliz. c. 5. avoids all fraudulent deeds, conveyances, &c. intended to defraud creditors, and punishes them with the forfeiture of one year's profit of the alienated lands and imprisonment for half a year. And the 27 Eliz. c. 4. makes the same provision for all cases in which the intent is to defraud purchasers. The offence of cheating with dice, &c. under 9 Ann, c. 14. s. 5. has been already considered as an offence against public police, ante 677, 8.

Indict-  
ment.

[\*999]

Several\* persons may be jointly indicted under any of the statutes of fraud and false pretences. And where the pretence is conveyed by words spoken by one defendant in the presence of others in concert with whom he is acting all of them may be included in one proceeding. One indictment may also include several charges; so that the judgment on them would be similar, 3 T. R. 98. Both at common law, and on the 33 Henry VIII. it was necessary to set forth the means or false tokens by which the fraud was effected, 2 Mod. 316. 2 Stra. 1127. And it has been repeatedly decided, that in all indictments on 30 Geo. II. it is necessary to set forth the false pretences employed by the defendant as they will appear at the trial, 2 T. R. 581. 1 Campb. 495. In this statement it will be necessary to observe all possible accuracy; for where it was alleged that the defendant said he had paid a sum of money into the bank of England, and it was proved in evidence that he merely alleged "the money had been paid at the bank," the variance was holden fatal, 1 Campb. 494. But a basket is sufficiently described in the proceedings, under the general term "parcel" 1 Campb. 212.; and it does not seem necessary to describe the false pretences with greater minuteness than that with which they were presented to the mind of the party injured at the time the imposition was practised upon him, 3 T. R. 102. On general principles, it seems necessary, not only to set forth the circumstances so as to shew on the record that the offence is such an one as the legislature intended to punish, but also describe it in the technical words used in the provision. It has, however, been holden in an indictment on 33 Hen. VIII. that it is not necessary expressly to allege that the fraud was effected by means of a privy token, if that be a necessary inference from the facts which specially appear, Cro. Car. 564. At the present day this seems doubtful. It is, however, certain that on 30 Geo. II. it is sufficient, after stating the circumstances of the deceit to aver "by means of which said *false pretences* the defendant unlawfully, knowingly and designedly obtained from the party injured, the goods, &c. with intent to cheat

him of the same," and afterwards to negative the truth of the pretences employed without any formal allegation that they are false, 2 East, Rep. 30. But there must be an absolute negative of the truth of all the pretences employed; and it is not sufficient to charge that the defendant *falsely pretended*, &c. setting forth the means used, and then to aver that by means of such false pretences he obtained the property; but the absolute negative must be given to all the assertions of the party indicted, as in an assignment of perjury, 2 M. and S. 379.

The punishment of the defendant when convicted is prescribed by\* the different statutes creating the offence; it is at least as severe as in cases of simple larceny. But when goods have been obtained by mere fraud, the court have no power, as in case of felony, to award restitution to the owner, 2 Leach, 585. 5 T. R. 175.

The punishment.  
[\*1000]

## INDICTMENTS FOR DECEIT AND FALSE PRETENCES, AT COMMON LAW.

Essex, to wit. That J. H. late of, &c. on, &c. and from thence until the taking this inquisition, did use and exercise the trade and business of a shop keeper, and during that time did deal in the buying and selling by weight, of divers goods, wares and merchandizes, to wit, at, &c. aforesaid; and that the said J. H. being a person of wicked and depraved mind, and contriving and fraudulently intending to cheat and defraud the subjects of our said lord the king, whilst he used and exercised his said trade and business, to wit, on the said, &c. and on divers other days and times between that day and the day of taking this inquisition, at, &c. aforesaid, did knowingly, wilfully and publicly keep in a certain shop there, wherein he the said J. H. did so as aforesaid carry on his said trade, a certain false pair of scales for the weighing of goods, wares and merchandizes, by him sold in

For selling by false weights and measures. (b)

(b) See general note, ante 996 to 1000 and see similar precedents, 6 Wentw. 389. Starkie, 467. For selling beer in casks short of measure, 6 Wentw. 389. Indictments for selling goods with counterfeit marks, Trem. P. C. 103, 6. For selling counterfeit Dutch guilders as real, Cro. C. C. 282. 7th Ed. Selling a brass chain for gold, Id. 283. which indictments seem not to be main-

tainable, ante 996, 7. The indictment for selling bad wine given, 2 Ld. Raym. 1179. Cro. C. A. 414. 2 Starkie, 468, was either a case of conspiracy, or held sustainable on the ground of the injury to public health, 8 East, 133, 6. See indictments for fraudulent gaming, ante 677, 8. Selling unwholesome provisions, ante 559.

the way of his said trade, which said scales were then and there by artful and deceitful ways and means so made and constructed as to cause the goods, wares and merchandizes weighed therein and sold thereby, to appear of greater weight than the real and true weight, by one eighth part of such apparent weight; and that the said J. H. on, &c. aforesaid, at, &c. aforesaid, (he the said J. H. then and there knowing the said scales to be false, as aforesaid,) did knowingly, willingly and fraudulently sell and utter to one G. H. a subject of our said lord the king, certain goods in the way of his said trade, to wit, a large quantity of flour weighed in and by the said false scales, as and for fifty pounds\* weight of flour, whereas in truth and in fact the weight of the said flour so sold, as aforesaid, was short and deficient of the said weight of one hundred pounds by one eighth part of the said weight of one hundred pounds, to wit, at, &c. aforesaid, to the great damage of the said G. H. to the evil example, &c. and against the peace, &c.

For a misdemeanor at common law, for defrauding a person of money by counterfeiting the post mark on a piece of paper folded up like a letter. (c)

That S. L. late of, &c. being an evil disposed person, and devising and intending to deceive and defraud the liege subjects of our said lord the king of their monies by colour and pretext of the duties payable to our said lord the king for postage and conveyance of letters on, &c. at, &c. aforesaid, and upon a certain piece of paper folded up and sealed in the form of a letter, directed to Mr. S. R. to be left at, &c. [*set out the direction.*] and inclosing another piece of paper, supposed to be a letter, directed to Mr. R. L. London, fraudulently and deceitfully did counterfeit and resemble, and caused to be counterfeited and resembled, the impression of the mark or stamp used by the deputy post-master of the city of Exeter, to mark letters sent by the post from the city of Exeter to the city of London, to wit, the word Exeter, and also the impression of the mark or stamp used by the post-master general at the city of London, to stamp letters brought by the post from other post towns to the said city of London, which said mark denotes the day and month when such letters are brought to the last mentioned city; and that the said S. L. by colour of the said counterfeit impressions, and under pretence that he the said S. L. had paid the sum of eight pence for the postage of the said letter, did then and there, to wit, on the said, &c. at the said, &c. fraudulently and deceitfully demand, receive and have of J. H. for and on behalf of the said L. R. the sum of eight pence of lawful money of Great Britain. And so the said S. L. him the said L. R. of

(c) See a similar precedent, Cro. a general note, ante 996 to 1000, C. C. 7th Ed. 320. 8th Ed. 175. See

the said sum of eight pence, then and there fraudulently and deceitfully did deceive and defraud, to the great damage of the said L. R. and against the peace, &c.

That W. C. late of, &c. on, &c. in the parish of, &c. was admitted an out-pensioner of the royal hospital at Chelsea, from the second regiment of foot of our said lord the king, then commanded by J. S. Esq. by reason of his service as a soldier in the said regiment, and the said W. C. did continue such pensioner from the said, &c. until, &c. during which time he the said W. C. at, &c. aforesaid, did receive of and from the pay-master of the said hospital a pension of five pence by the day. And the jurors, &c. do further present, that the said W. C. being an evil disposed person, and devising\* and intending fraudulently and unjustly to obtain and acquire to himself divers sums of money of and from the paymaster of the said hospital, and to defraud our said lord the king of divers sums of money on, &c. at, &c. aforesaid, unlawfully, fraudulently and deceitfully, did cause and procure himself to be admitted an out-pensioner of the said hospital as from the first regiment of foot guards under a pretence of his service as a soldier in the said regiment, and also under pretence of his service in the same regiment, and also under pretence that he the said W. C. was not otherwise provided for by the government; and the said W. C. did continue such pensioner as from the said first regiment of foot guards from the said, &c. last above mentioned until, &c. at, &c. aforesaid; and the said W. C. the better to perfect his wicked designs and intentions on the — day of, &c. in, &c. and on divers other days and times during the time last mentioned, at, &c. aforesaid, falsely and wickedly did depose and swear upon his corporal oath before T. C. esq. then and yet one of the justices of our said lord the king, assigned to keep the peace of our said lord the king, in and for the said county of Middlesex, that he the said W. C. was a pensioner of Chelsea college, meaning the said royal hospital of Chelsea, from the first regiment of foot guards, and that he the said W. C. was not otherwise provided for by the government, whereas in truth and in fact the said W. C. then and during the whole time last above mentioned, to wit, from the said, &c. until the said, &c. was otherwise provided for by the government than as a pensioner from the first regiment of foot guards, that is to say, he the said W. C. during the whole time last above mentioned was provided for and did receive a pension of five pence by the day as a pensioner from the said college or royal hospital at Chelsea,

Against a pensioner of Chelsea College for defrauding the king of money by procuring himself to be admitted an out-pensioner of the same college as of another regiment, and under pretence that he was not provided for by the government, whereas he was provided for, &c.

(d)

[\*1002]

(d) See a similar precedent, Cro. ante 996 to 1000. C. C. 7th Ed. 321. See general notes,

as from the said second regiment in manner and form in that behalf aforesaid. And the jurors, &c. do further present, that the said W. C. at divers days and times between the said, &c. and the said, &c. aforesaid, at, &c. aforesaid, under the false pretence aforesaid, did fraudulently receive and obtain of and from the pay-master of the said hospital divers sums of money, amounting in the whole to the sum of thirty pounds, seventeen shillings and eleven pence, as a pensioner from the said first regiment of foot guards; and so the jurors, &c. do say, that the said W. C. in manner and form aforesaid, did fraudulently and deceitfully deceive and defraud our said lord the now king, of the sum of thirty pounds, seven shillings and eleven pence, to the great damage of our said lord the king, to the evil example, &c. and against the peace.

[\*1003]

For obtaining money under pretence of being collectors of income tax. (e)

That\* A. B. late of, &c. and C. D. late of, &c. unlawfully contriving and intending to cheat and defraud one A. P. heretofore, to wit, on, &c. with force and arms, at, &c. did, by colour and pretence of their the said A. B. and C. D. being collectors of certain duties, payable to our said lord the king, under and by virtue of the statute in such case made and provided, unlawfully, fraudulently and for the sake of gain and lucre, to them the said A. B. and C. D., demand and exact of and from the said A. P. a certain large sum of money, to wit, the sum of 5*l.* 5*s.* as and for duties payable by the said A. P. to them the said A. B. and C. D. for the use of our lord the king, under and by virtue of the said act of parliament, for a certain year then elapsed, to wit, the year ended on the fifth day of April, in the year of our lord 1804, did, then and there, in pursuance of such demand and exaction, unlawfully, fraudulently, and for the sake of such gain and lucre as aforesaid, receive and have, of and from the said A. P. a certain promissory note for the payment of money, to wit, the sum of 5*l.* 5*s.* and being of the value of 5*l.* 3*s.* in discharge of the said sum of money so demanded and exacted as last aforesaid, whereas in truth and in fact, the said sum of money so demanded and exacted as last aforesaid, was not, nor was any sum of money whatever, then and there payable by the said A. B. as and for duties to them the said A. B. and C. D. for the use of our said lord the king, under and by virtue of the said act of parliament, for the year in that behalf before mentioned, and the said A. B. and C. D. did afterwards, to wit, on, &c. at the township of P. in the

(e) 3 Smith Rep. 213. ante general note 996 to 1000. This precedent might be better arranged un-

der the head of extortion, ante 293, &c.



said county of Y. convert and dispose of the said promissory note, and the value thereof to their own use, &c. [*The fourth count was very similar, charging them to have received 5l. 5s. and there were other counts, charging them to have been collectors, and to have received the same by colour and pretence of the said office.*]

## INDICTMENTS FOR DECEITS AND FALSE PRETENCES, ON STATUTES.

That L. P. late of, &c. being an evil disposed person, and not minding to get his living by truth and honest labour, according to the laws of this realm, but compassing and devising how he might unlawfully\* obtain, and get into his hands and possession, the monies of the honest liege subjects of our said lord the king, for the maintenance of his unthrifty living (g) on, &c. at, &c. aforesaid, falsely and deceitfully did pretend and affirm to one T. T. that his, the said L. P.,s name was H. H. and that he was the son of H. H. of N. in the county of S. esquire, and nephew to Mr. H. of N. in the county of S. (meaning J. H. of N. in the county of S. clerk,) and that the said L. P. a certain false and counterfeit letter, in the name of him the said J. H. as a true letter of the proper hand-writing of him the said J. H. falsely, fraudulently, and deceitfully, to the said T. T. then and there did deliver, (he the J. H. of N. in the county of S. clerk, then and long being the special friend and intimate acquaintance of him the said T. T.) by which said false and counterfeit letter it was mentioned that the said J. H. desired the said T. T. to supply the bearer thereof, Mr. J. H. with the sum of sixty guineas, and to place it to his account, (meaning the account of him the said J. H.) and that the said T. T. then and there believing the said false and counterfeit letter, to be of the proper hand-writing of him the said J. H. did then and there pay and deliver to the said L. P. sixty pieces of gold coin, of the proper coin of this kingdom called guineas, of the value of sixty three pounds of lawful money of G. B. whereas in truth and in fact, the said J. H. never did write or send, or cause to be written or sent, any such letter to the said T. T. desiring the said T. T. to supply the said H. H. with any sum of money whatever, and so the jurors, &c. do say, that the said L. P. on the said, &c.

For defrauding a person of a sum of money by colour of a false and counterfeit letter and other false tokens, upon the statute 33 Hen. VIII. c. 1. (f) [\*1004]

(f) See a similar precedent Cro. C. C. 7th Ed. 307, 173. Starkie, 469. See general note, ante 996 to 1000.

(g) This statement of defendant's intent, is omitted in the 8th Ed. Cro. C. C. and Starkie.

at the said, &c. by colour of the said counterfeit letter, and by the said false pretences, unlawfully, falsely, fraudulently and deceitfully did obtain, and get into his hands and possession, of and from the said T. T. the said sum of sixty-three pounds of lawful money of G. B. of the monies of him the said T. T. and the said L. P. the said T. T. of his money aforesaid, then and there fraudulently and deceitfully did deceive and defraud, to the great damage and deceit of the said T. T. to the evil example, &c. against the peace, &c. and also against the form, &c.

Against a  
beer  
brewer  
for selling  
beer in  
casks  
short of  
measure,  
contrary  
to the sta-  
tute of 23  
Hen. VIII.  
(h)  
[\*1005]

That R. V. N. late of, &c. beer brewer, being an evil disposed person, and devising, designing and intending to impose upon one W. C. and to cheat and defraud him of his money, heretofore, after the feast of Lammas, mentioned in a certain act of parliament,\* made in the twenty-third year of the reign of king Henry the Eighth, entitled, "An act concerning the new making of barrels, kilderkins, and other vessels," to wit, on, &c. he the said R. V. N. then and there being a beer brewer, did falsely and fraudulently put to sale, and did then and there sell to the said W. C. for a large sum of money, to wit, the sum of three shillings and sixpence, beer, to be spent and used within this realm, to wit, at, &c. aforesaid, in a certain vessel of wood, in and for a firkin, but which said firkin did not, nor would then and there contain and hold the full and just measure of nine gallons, as by the said statute is directed and required, but the contents and gauge of which said firkin, was then and there under that measure, to wit, of the measure of six gallons and two pints, and no more, contrary to the form of the statute, &c. to the great damage and deceit of the said W. C. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said R. V. N. then and there being a beer brewer, and being such evil disposed person as aforesaid, and devising, designing and intending to impose upon the said W. C. and to cheat and defraud him of his money as aforesaid, after the feast of Lammas in the said act mentioned, to wit, on the said, &c. at, &c. aforesaid, did falsely and fraudulently put to sale, and did then and there sell to the said W. C. beer, to be spent and used within this realm, to wit, at, &c. aforesaid, in a certain vessel of wood as and for a firkin, but which said firkin was not then and there made and marked by an artificer of coopers, in manner as by the said statute is directed and required, contrary to the form of the statute, &c. to the great damage of the said W. C. to the evil example, &c. and against the peace, &c. [*two more counts saying kilderkins in-*

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(h) See a similar precedent, 4 996 to 1000.  
Wentw. 358. see general note, ante

*stead of firkins, seven shillings instead of three shillings and sixpence, and eighteen gallons instead of nine.]*

That O. O. late of, &c. being an evil disposed person, and a common cheat, and contriving and intending unlawfully, fraudulently and deceitfully to cheat and defraud one P. C. of, &c. woollen draper, of his goods, wares and merchandizes, for the support of his profligate way of life, on, &c. with force and arms, at, &c. aforesaid, unlawfully, knowingly and designedly did falsely presend to the said P. C. that he the said O. O. then was the servant of one C. C. of —, tailor, (the said C. C. then and long before, being well known to the said P. C. and a customer of the\* said P. C. in his said business and way of trade) and he the said O. O. was then sent by the said C. C. to the said P. C. for five yards of certain superfine woollen cloth, by which said false pretences the said O. O. did then and there, to wit, on, &c. at, &c. aforesaid, unlawfully, knowingly and designedly obtain from the said P. C. five yards of superfine woollen cloth of the value of four pounds, fifteen shillings, of the goods, wares and merchandizes of the said P. C. with intent then and there to cheat and defraud him the said P. C. of the same, whereas in truth and in fact the said O. O. was not then the servant of the said C. C. and whereas he the said O. O. was not then, or ever hath been sent by the said C. C. to the said P. C. for the said cloth, or for any cloth whatsoever, to the great damage and deception (k) of the said P. C. to the evil example, &c. against the peace, &c. and also against the form of the statute, &c.

On 30  
Geo. II. c.  
24. for ob-  
taining  
goods  
from a  
tradesman  
under pre-  
tence of  
being ser-  
vant to a  
customer  
and sent  
for them  
by him. (i)  
[\*1006]

That J. B. late of, &c. T. A. late of, &c. and W. R. late of, &c. contriving and intending unlawfully, fraudulently and deceitfully to cheat and defraud one T. R. an honest and worthy subject of this realm of his goods and merchandizes, for the support of their profligate way of life, on, &c. with force and arms, at, &c. aforesaid, did falsely, unlawfully, knowingly and designedly, fraudulently and wickedly pretend to the said T. R. that the said W. R. then was a merchant of great fortune, who wanted to purchase horses in order to send them abroad, and that he then was a housekeeper at P. common, in the county of K. whereas in truth and in fact, the said W. R. was not then a merchant of great fortune, who wanted to purchase horses in order to send them abroad, nor was then a housekeeper at P. common,

On 30  
Geo. II. c.  
24. s. 1.  
for obtain-  
ing goods  
under  
false pre-  
tences of  
being  
merchants  
of good  
fortune,  
&c. (l)

(i) See similar precedents, Cro. C. C. 7th Ed. 335. 8th Ed. 177. Starkie, 474. Williams, J. False Pretences, see general notes, ante 996 to 1000.

(k) The word "deception" seems

unnecessary, and is frequently omitted.

(l) See similar precedents, Cro. C. C. 7th Ed. 352. 8th Ed. 176. Starkie, 352. and general note, ante 996 to 1000.

Second  
count,  
omitting  
that W. R.  
wanted  
horses in  
order to  
to send  
them  
abroad.  
[\*1007]

aforesaid, in the said county of K. as the said J. B., T. A. and W. R. did then and there, to wit, at, &c. falsely pretend to the said T. R. And the jurors, &c. aforesaid, do further present, That the said J. B., T. A. and W. R. by the false pretences aforesaid, did then and there unlawfully, knowingly and designedly obtain from the said T. R. divers goods and merchandizes, that is to say, one mare and six geldings of him the said T. R. of great price and value, to wit, of the price and value of one hundred and forty pounds of lawful money of G. B. with intent then and there to cheat and defraud the said T. R. of the same, to the great damage of the said T. R. to the evil example, &c. against the peace, &c. and also against\* the form, &c. And the jurors, &c. do further present, that the said J. B., T. A. and W. R. being wicked and evil disposed persons, and common cheats, and contriving and intending unlawfully, fraudulently and deceitfully, to cheat and defraud the said T. R. of his goods and merchandizes, for the support of their profligate way of life, afterwards, to wit, on the same day and year aforesaid, with force and arms, at, &c. aforesaid, did falsely, fraudulently, and wickedly pretend to the said T. R. that the said W. R. then was a merchant of great fortune, and that he was then a house keeper at P. common aforesaid, in the said county of K. whereas in truth and in fact, the said W. R. was not then a merchant of great fortune, nor was then a housekeeper at P. common, aforesaid, in the said county of K. as the said J. B., T. A. and W. R. did then and there, to wit, at, &c. so falsely pretend to the said T. R. And the jurors, &c. do further present, that the said J. B., T. A. and W. R. by the false pretences last aforesaid, did then and there unlawfully, knowingly and designedly, obtain from the said T. R. divers goods and merchandizes, that is to say, one mare and six geldings of him the said T. R. of great value, to wit, of the value of one hundred and forty pounds of lawful money of G. B. with intent then and there to cheat and defraud the said T. R. of the same, to the great damage of the said T. R. to the evil example, &c. against the peace, &c. and also against the form, &c. [*Third count like the first, only omitting the false pretence of the residence.*]

On 30 Geo.  
II. c. 24  
for obtain-  
ing goods  
under the  
false pre-  
tences that  
he was re-  
commend-  
ed by a  
partner,

That H. H. late of, &c. being an evil disposed person, and contriving and intending unlawfully, fraudulently and deceitfully to cheat and defraud W. K., J. O. B. and D. K. silk manufacturers, and sellers of their goods, wares and merchandizes, for the support of his profligate way of life, on, &c. at, &c. aforesaid, did go to the warehouse of the said W. K. and then and there, with force and arms, unlawfully, knowingly and designedly, fraudulently and wickedly did falsely pretend to one G. M. then and there being the servant and shopman

of the said W. K., J. O. B. and D. K. that he said H. H. was recommended by the said J. O. B. as a fit and proper person for them the W. K., J. O. B. and D. K. to deal with in the way of their said trade and business, whereas in truth and in fact he the said H. H. was not recommended by the said J. O. B. but on the contrary thereof was then and there wholly unknown to the said J. O. B. And the jurors, &c. do further present, that the said H. H. in further prosecution of\* his said intention to cheat and defraud the said W. K., J. O. B. and D. K. of their goods, wares and merchandizes, afterwards, to wit, on the day and year aforesaid, at, &c. aforesaid, with force and arms, unlawfully, knowingly and designedly, fraudulently and wickedly did falsely pretend to the said G. M. so then being the servant and shopman of the said W. K., J. O. B. and D. K. as aforesaid, that if certain goods and merchandizes, to wit, six dozen of handkerchiefs, and ten pieces of handkerchiefs, of the said W. K., J. O. B. and D. K. which he the said G. M. had then and there shown to the said H. H. were sent to Number 22 New street, Bishops-gate street, at 7 o'clock in the evening of the same day, he the said H. H. would pay the sum of 27*l.* 19*s.* of lawful money of G. B. for the same, upon the delivery thereof there. And the jurors, &c. do further present, that the said goods, wares and merchandizes, were sent by the said W. K., J. O. B. and D. K. to No. 22, N. street, aforesaid, at 7 o'clock in the evening of the day aforesaid, and that thereupon the said H. H. then and there, with force and arms, unlawfully, knowingly and designedly, fraudulently, deceitfully and wickedly, in order to induce the said G. M. to deliver the said goods, wares and merchandizes, to him the said H. H. did deliver to the said G. M. he then and there being such servant and shopman as aforesaid, a certain bill of exchange as in part payment of the said sum 27*l.* 19*s.* and then and there falsely, knowingly and designedly represented the same to be a good bill, and as good a bill as cash (thereby then and there meaning that the same would be paid when due, by the person by whom it appeared to be accepted) which said bill of exchange is as follows :

and that a bill of exchange was good.  
(m)

[\*1008]

27*l.* 19*s.*

London, 27th December, 1800.

One month after date, pay to my order the sum of twenty-seven pounds, nineteen shillings, value received.

H. H.

To Mr. R. E. at Messrs. M. and Co.

B. church yard, T. street.

Accepted R. E.

(m) This indictment was settled East, 30. 2. M. and S. 379. and general note, ante 996 to 1000.  
by an eminent crown lawyer, see 2

and which said bill of exchange was then and there indorsed as follows, that is to say H. H., he the said H. H. then and there well knowing the said bill of exchange to be of no value and that the same would not be paid, and whereas in truth and in fact, the said sum of money in the said bill of exchange still remains wholly unpaid. And the jurors, &c. do further present, that the said H. H. by means of false pretences aforesaid, afterwards to wit, on, &c. aforesaid, at, &c. aforesaid, with force and arms, unlawfully, knowingly and designedly did obtain from the said G. M. so then and there being the servant and shopman of the said\* W. K., J. O. B. and D. their said goods wares and merchandizes then and there being of a large price and value, to wit, of the value of 30*l.* with intent then and there to cheat and defraud them of the same, to the great damage, &c. [*Second count like the first, charging only the false pretence of the recommendation. Fourth count, charging only what relates to the bill of exchange.*]

On 30  
Geo. II. c.  
24. for  
falsely  
pretend-  
ing a child  
to be a  
pauper of  
a parish,  
and there-  
by obtain-  
ing money  
for its sup-  
port. (n)

That I. B. late of, &c. on, &c. with force and arms, unlawfully, knowingly and designedly did falsely pretend to me, D. N. then being one of the overseers of the poor of the parish aforesaid, in the county aforesaid, that a certain female child which he the said I. B. had with him, belonged to the said parish, (meaning that the said female child was a pauper of and belonging to the said parish of —,) and that she was born in a barn at W. in the same parish, and that he the said I. B. had married the said child's mother, and that she had lived with him three years, and then died, (meaning that he the said I. B. had been married to the mother of the said female child, and that the mother of the said female child had cohabited and lived with him the said I. B. three years after such marriage, and then died,) and that his family was very large, and that he was not able to support the said child without some relief from the said parish, by means of which said false pretences he the said I. B. did then and there unlawfully, knowingly and designedly obtain, require and get into his hands and possession of and from the said D. N. five shillings in monies, numbered of the monies of the said D. N. with intention then and there to cheat and defraud him of the same, whereas in truth and in fact the said female was not a pauper of and belonging to the said parish, nor was she born in the said barn at W. in the said parish, and whereas in truth and in fact the said I. B. had not been married to the said child's mother, nor had she lived with him three years and then died, to the great damage, &c. [*as ante 1004.*]

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(n) See general note, ante 996 to 1000.



That G. R. late of, &c. being an evil disposed person, and a common cheat, and contriving and intending unlawfully, fraudulently and deceitfully to cheat and defraud one M. L. victualler, of his monies for the support of his profligate way of life, on, &c. with force and arms, at, &c. aforesaid, did unlawfully, knowingly, designedly and falsely pretend to the said M. L. that one W. H. was a gentleman of fortune, residing at H. in the county of B. and that divers large sums of money were due and owing from the said W. H. to the said G. R. and that the said W. H. would accept\* and pay according to the tenor and effect thereof, a certain bill of exchange in writing, then and there drawn by the said G. R. upon the said W. H. and dated the day and year aforesaid, and whereby the said G. R. required the said W. H. to pay to the said M. L. or order, the sum of thirty-one pounds, ten shillings, one week after the date thereof, and to place the same to the account of him the said G. R. and then and there delivered the same to the said M. L. by which said false pretences the said G. R. did then and there, to wit, on, &c. aforesaid, at, &c. aforesaid, with force and arms, unlawfully, knowingly and designedly did obtain from the said M. L. a large sum of money, to wit, the sum of 5*l.* 10*s.* of the money of the said M. L. with intent then and there to defraud him the said M. L. of the same. Whereas in truth and in fact the said W. H. was not a gentlemen of fortune residing at H. in the county of B. ; and whereas in truth and in fact there were not then and there divers large sums of money due and owing from the said W. H. to the said G. R. ; and whereas in truth and in fact there was not then any sum of money whatsoever, due and owing from the said W. H. to the said G. R. ; and whereas in truth and in fact the said W. H. did not nor would, accept the said bill of exchange ; and whereas in truth and in fact the said W. H. did not, could not, nor would pay the said bill of exchange when the same became due, according to the tenor and effect of the said bill, or at any other time whatsoever, to the great damage, &c. [as ante 1004.] And the jurors, &c. do further present, that the said G. R. being such evil disposed person, and such common cheat as aforesaid, and contriving and intending unlawfully, fraudulently and deceitfully to cheat and defraud the said M. L. of his monies, for the support of his profligate way of life, on the said, &c. with force and arms at, &c. aforesaid, unlawfully, knowingly and designedly did falsely pretend to the said M. L. that the said W. H. was a gentleman residing at H. in the county of B. and that the said W. H. would pay a

For obtaining money under false pretences of drawing upon a person who the prisoner pretended was indebted to him, and that he was a gentleman of fortune, whereas he was in fact a pauper, and not indebted.  
(o)  
[\*1010]

Second count.

(o) See similar precedents, 4 *ral* note, ante 996 to 1000. Wentw. 357. Stark. 471. and gene-

[\*1011]

Information  
against an  
attorney,  
on 30 Geo.  
II. c. 24.  
s. 1. em-  
ployed by  
the excise  
to conduct  
the oppo-  
sition of  
an appeal  
against a  
conviction  
on a penal  
statute for  
pretend-  
ing he  
gave  
larger  
fees to  
counsel  
than he  
really did,  
and by  
this means  
obtaining  
the sur-  
plus. (p)

certain other bill of exchange in writing, then and there drawn by the said G. R. upon the said W. H. and dated the day and year last aforesaid, and whereby the said G. R. required the said W. H. to pay the same to M. L. or order, the sum of thirty-one pounds, ten shillings, one week after date thereof, and to place the same to the account of him the said G. R. and then and there delivered the same to the said M. L. by which said false pretence the said G. R. did afterwards, to wit, on, &c. aforesaid, to wit, at, &c. aforesaid, with force, and arms, &c. unlawfully, knowingly and designedly obtain from the said M. L. a large sum of money, to wit, the sum of five pounds, ten shillings, of the money of the said M. L. with intent then and there to defraud him\* the said M. L. of the same; whereas in truth and in fact the said W. H. was not then a gentleman residing at H. in the county of B.; and whereas in truth and in fact, the said W. H. was then and there a pauper, chargeable to, and maintained by, the said parish of H. in the county of B.; and whereas in truth and in fact, the said W. H. did not, could not, nor would pay the said last mentioned bill of exchange or any part of the money therein mentioned; and whereas in truth and in fact the said W. H. at the time of drawing the said last mentioned bill of exchange, and also at the time therein mentioned for payment thereof, was wholly insolvent and incapable of paying the same, which the said G. R. then and there well knew, to the great damage, &c. [*as ante* 1004.]

[Commencement of information as ante 7.] That heretofore, to wit, on, &c. at, &c. S. J. then being one of the officers of the excise of our said lord the king, as well for our said lord the king as for himself, in due form of law did exhibit a certain complaint and information unto and before J. W. clerk, and W. W. esquire, then and there being two justices of the peace of our said lord the king, in and for the said county of Hereford, residing near to the place where the offence thereafter mentioned was committed, and thereby the said S. J. then and there informed the said justices that before, and at the time of the committing of the offence therein aftermentioned, W. P. was a chandler and maker of candles at T. in the said county of H. and being there such chandler and maker of candles, he the said W. P. after the twenty-fourth day of June, 1725, and within three months then last past, to wit, on the third day of November then last past, at T. in the county aforesaid, did make use of a certain room and place there, for the making of candles, and for the keeping of tallow and other materials proper to be made into candles, without first making or having made, with the proper

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(p) See general note, ante 996 to 1000.

officer appointed for that purpose, at the next office of excise, within the limits whereof the said room and place was situate, a true and particular entry in writing thereof, contrary to the form of the statute in that case made and provided, whereby and by force of the statute in that case made and provided, the said W. P. had forfeited and lost the sum of one hundred pounds for the said room and place so made use of, without first making, or having made thereof such entry as aforesaid, whereupon the said S. J. prayed the judgment of the said justices in the premises, and that the said W. P. might be summoned to answer the premises, and make his defence thereto before the said justices, and afterwards to wit, on, &c. at, &c. aforesaid, the said W. P. did appear, and was present before the said justices to answer\* the premises [\*1012] aforesaid, to make defence to the said information, and having heard the said information read to him, did then and there plead that he was not guilty of the said premises above charged upon him, whereupon the said justices, in the presence and hearing of the said W. P. then and there proceeded to examine and enquire into the truth of the premises aforesaid, and thereupon afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, the said justices did convict the said W. P. of the said offence charged upon him in and by the said information, and did adjudge the said W. P. to forfeit and lose for his offence aforesaid, the sum of one hundred pounds, which sum the said justices did then and there mitigate and lessen to the sum of twenty-five pounds, six shillings, and threepence of lawful money of G. B. which said last-mentioned sum the said justices ordered to be paid and distributed, one moiety thereof to the use of our said lord the king, and the other moiety to the said S. J. the informer, according to the form of the statute, &c. And the said attorney general, &c. further giveth the court here to understand and be informed, that afterwards, to wit, on, &c. at, &c. aforesaid, the said W. P. gave notice in writing to the said S. J. that he the said W. P. should, at the then next general quarter sessions of the peace to be holden for the county of H. aforesaid, in and for the said county, on, &c. enter and prosecute an appeal against the said conviction so made by the above named justices as aforesaid, and afterwards and before the said general quarter sessions of the peace, to wit, on the said, &c. at, &c. one J. S. attorney at law, was employed as attorney and solicitor on behalf of the said J. S. to attend at the said sessions, and to instruct and fee counsel on behalf of the said S. J. to oppose such intended appeal of the said W. P. at the said sessions, and thereupon the said J. S. as such attorney and solicitor as aforesaid, did then and there employ and retain R. P. esquire, and E. W. esquire, barris-

ters at law, as counsel on behalf of the said S. J. to oppose such intended appeal of the said W. P. at the said sessions, and the said J. S. did then and there deliver a brief, and give and pay a fee of two guineas therewith to the said R. P. and did also then and there deliver a brief, and give and pay a fee of one guinea therewith to the said E. W. as counsel on behalf of the said S. J. as aforesaid. And the said attorney general, &c. giveth the court here further to understand and be informed that the said J. S. late of, &c. gentleman, being an evil disposed person, and well knowing the several premises aforesaid, and that the charges of him the said J. S. as such attorney and solicitor as aforesaid, were directed by the commissioners of the excise of our said lord the king, to be paid to him the said J. S. by J. B. one of\* the collectors of the excise of our said lord the king out of the produce of the said fine and forfeiture of the said W. P. then being in the hands and possession of the said J. B. afterwards, to wit, on, &c. at, &c. aforesaid, unlawfully, knowingly, and designedly did falsely pretend to the said J. B. that he the said J. S. as such attorney and solicitor as aforesaid, did give and pay to the said R. P. a fee of three guineas, with the said brief so delivered to the said R. P. by him the said J. S. as aforesaid, and that he the said J. S. as such attorney and solicitor as aforesaid, did give and pay to the said E. W. the fee of two guineas with the said brief so delivered to the said E. W. by the said J. S. as aforesaid. By means of which said false pretences the said J. S. then and there, to wit, on the said, &c. at, &c. aforesaid, unlawfully, knowingly and designedly did obtain of and from the said J. B. a certain sum of money, to wit, the sum of two pounds, and two shillings of the proper money of the said J. B. with intent then and there to cheat and defraud him of the same. Whereas in truth and in fact the said J. S. as such attorney and solicitor as aforesaid, had not then given or paid to the said R. P. a fee of three guineas with the said brief so delivered to the said R. P. by him the said J. S. as aforesaid, but on the contrary thereof he the said J. S. had then given or paid to the said R. P. a fee of two guineas and no more, with the said brief, to wit, at, &c. aforesaid; and whereas in truth and in fact the said J. S. as such attorney and solicitor as aforesaid, had not then given or paid to the said E. W. a fee of two guineas with the said brief so delivered to the said E. W. by him the said J. S. as aforesaid, but on the contrary thereof, he the said J. S. had then given or paid to the said E. W. a fee of one guinea, with the said brief, and no more, to wit, at, &c. aforesaid; in the county aforesaid, to the great damage of the said J. B. in contempt of our said lord the king and his laws, to the evil example of

all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our said lord the king his crown and dignity. And the said attorney general, &c. further giveth the court to understand and be informed, that heretofore, to wit, on, &c. at, &c. aforesaid, the said W. P. gave notice in writing to the said S. J. and to R. W. and L. N. officers of excise, that he the said W. P. should, at the then next general sessions of the peace, to be holden for the county of H. at H. in and for the said county, on, &c. then instant enter and prosecute an appeal against a conviction or judgment made by the Reverend J. W. and W. W. esquire, two of his majesty's justices of the peace for the said county, whereby he the said W. P. was convicted\* in the penalty of twenty-five pounds, six shillings and three-pence, for certain offences alleged to have been committed by him the said W. P. against the laws and statutes of excise, and which penalty was alleged by the said notice to have been levied upon the goods and chattels of the said W. P. by virtue of a warrant under the hands and seals of the said J. W. and W. W. and paid to the said S. J., R. W. and L. N. one of them together with the sum of two guineas for the costs of levying the same. And the said attorney general, &c. giveth the court here further to understand and be informed, that afterwards, to wit, on the said, &c. at, &c. aforesaid, the said J. S. as the attorney and solicitor, for and on the behalf of the said S. J., R. W. and L. N. did deliver a brief to the said R. P. and pay him therewith two guineas, as and for his fee as counsel to oppose the said last mentioned intended appeal of the said W. P. at the said last mentioned general quarter sessions of the peace, and did also then and there deliver to the said E. W. a brief, and pay him therewith one guinea as and for his fee as counsel, to oppose the said last mentioned intended appeal as aforesaid. And the said attorney general, &c. further giveth the court here to understand and be informed thst the said J. S. afterwards, to wit, on the said, &c. at, &c. aforesaid, did apply for payment of his bill of costs and charges, as such attorney and solicitor as last aforesaid, to the said J. B. he the said J. B. having been directed by the commissioners of the excise of our said lord the king, to pay the said bill. And the said J. S. being such person as aforesaid, and contriving and intending to cheat and defraud the said J. B. of his monies, then and there, to wit, on the said, &c. at, &c. aforesaid, unlawfully, knowingly and designedly, did falsely pretend to the said J. B. that he the said J. S. as such attorney and solicitor as last aforesaid, had paid to the said R. P. three guineas, as and for his fee as counsel, as last aforesaid, with the said brief so delivered to him the said R. P. by the

Second  
count.

[\*1014]

Third  
count.

[\*1015]

said J. S. as last aforesaid. And that he the said J. S. as such attorney and solicitor as last aforesaid, had paid to the said E. P. W. two guineas, as and for his fee as counsel as last aforesaid, with the said brief so delivered to him the said E. W. by the said J. S. as last aforesaid, by means of which said last mentioned false pretence, the said J. S. then and there unlawfully, knowingly and designedly did obtain, of and from the said J. B. the sum of two pounds, and two shillings, of the proper money of the said J. B. with intent to cheat and defraud him thereof. Whereas in truth and in fact the said J. S. as such attorney and solicitor as last aforesaid, had not paid to the said R. P. three guineas, as and for his fee as counsel as last aforesaid, with the said\* brief so delivered to him the said R. P. by the said J. S. as last aforesaid; and whereas in truth and in fact the said J. S. as such attorney and solicitor as last aforesaid, had not paid to the said E. W. two guineas, as and for his fee as counsel as last aforesaid, with the said brief so delivered to him the said E. W. by the said J. S. as last aforesaid, to the great damage, &c. [*as ante* 1013.] And the said attorney general, &c. giveth the court here further to understand and be informed that the said J. S. on, &c. aforesaid, at, &c. aforesaid, had been and was employed as an attorney and solicitor by one T. J. a collector of the excise of our said lord the king, to oppose an appeal of one W. P. at the general quarter sessions of the peace, holden on, &c. at H. in and for the county of H. against a certain conviction or judgment, made by the justices last above named, whereby the said W. P. was convicted in the penalty of twenty-five pounds, six shillings, and three pence, for certain offences alleged to have been committed by him against the laws and statutes of excise, and that the said J. S, afterwards, to wit, on the said, &c. at, &c. aforesaid, did make out a bill of charges and disbursements, as charges and disbursements made by him as such attorney and solicitor as last aforesaid, in and about opposing such appeal of the said W. P. and afterwards, to wit, on the said, &c. at, &c. aforesaid, did apply to the said J. B. for payment of the said last mentioned bill, and did then and there unlawfully, knowingly and designedly, falsely pretend to the said J. B. that the said last mentioned bill was a just and true bill of the charges and disbursements of him the said J. S. as such attorney and solicitor as last aforesaid, in and about opposing the said appeal of the said W. P. at the said last mentioned general quarter sessions of the peace, and that he the said J. S. had paid to R. P. esquire, barrister at law, three guineas, with a brief to oppose the said appeal of the said W. P. at the said last mentioned general quarter sessions of the peace, and that he the said J. S. had also paid to E. W. esquire, barrister at



law, two guineas, with a brief to oppose the said appeal of the said W. P. at the said last mentioned general quarter sessions of the peace, by means of which said last mentioned false pretences, he the said J. S. then and there, to wit, on the said, &c. at, &c. aforesaid, unlawfully, knowingly and designedly did obtain of and from the said J. B. the sum of two pounds and two shillings of the monies of our said lord the king, and the said S. J. with intent then and there to cheat and defraud our said lord the king, and the said S. J. thereof. Whereas in truth and in fact, the said last mentioned bill was not a just and true bill of the charges and disbursements of him the said J. S. as such attorney and solicitor as last aforesaid,\* in and about opposing the said appeal of the said W. P. at the said last mentioned general quarter sessions of the peace; and whereas in truth and in fact, the said J. S. had not paid to the said R. P. three guineas, with a brief to oppose the said appeal of the said W. P. at the said last mentioned general quarter sessions of the peace, but on the contrary thereof, he the said J. S. had paid to the said R. P. two guineas only with the said brief, to wit, at, &c. aforesaid; and whereas in truth and in fact, the said J. S. had not paid to the said E. W. two guineas, with a brief to oppose the said appeal of the said W. P. at the said last mentioned general quarter sessions of the peace, but on the contrary thereof he the said J. S. had paid to the said E. W. one guinea only, with the said brief, to wit, at, &c. aforesaid, in contempt, &c. [*as ante* 1013. *Conclusion of information as ante* 6.]

[\*1016]

That R. H. late of, &c. yeoman, being an evil disposed person and a common cheat, and contriving and intending unlawfully, fraudulently and deceitfully, to cheat and defraud one R. B. an honest and worthy subject of this realm, of his monies, for the support of his profligate way of life, on, &c. with force and arms, at, &c. aforesaid, did falsely, knowingly, designedly and unlawfully, pretend to the said R. B., that a certain paper writing then and there produced by him the said R. H., and which said paper writing was and is in the words and figures following, to wit, "Brighthelmstone new bank, 5 guineas. I promise to pay the bearer on demand the sum of 5 guineas, here or at Messrs. Masterman's, Porter's and Co. Bankers in London, value received the — day of —, 1797, for Rickman, Wigney and Co." Five guineas entered was a good and negotiable promissory note, and security for the payment of the said sum of five guineas, therein mentioned, whereas in truth and in fact, the said paper writing was not a good and negotiable promissory note and security for the payment of the said sum of five guineas therein men-

On 30 Geo. II. c. 24. for obtaining money upon a paper writing under false pretence that it was a good note of hand, and a security for the money advanced by testator. (q)

(q) See general note, ante 996 to 1000.

tioned, as the said R. H. then and there at the time of the false pretence aforesaid well knew. And the said R. H. then and there, to wit, on the said, &c. at, &c. aforesaid, unlawfully, knowingly and designedly, did give and deliver the said paper writing to the said R. B. as being such good and negotiable promissory note and security as aforesaid, in payment of the sum of five shillings, of lawful, &c. then and there due and owing from the said R. H. to the said R. B. and for the sum of five pounds of like lawful money, then and there advanced and paid thereon by the said R. B. to the said R. H. And the jurors, &c. do further present, that the said R. H. by the false pretences aforesaid, did then and there unlawfully, knowingly and designedly\* obtain from the said R. B. the said sum of five pounds, with intent then and there to cheat and defraud the said R. B. of the same, to the great damage, &c. [*as ante* 1013.]

For pretending to attesting justice and recruiting sergeant that defendant was not an apprentice, thereby obtaining money to enlist. (r)

That on, &c. one D. K. then being a serjeant in the invalid battalion of the Royal Regiment of Artillery of our said lord the king, then and long before was a person in due manner appointed and authorized to enlist persons to serve our said lord the king as soldiers in the corps of royal military artificers and labourers, and that one S. D. had then lately before enlisted with the said D. K. to serve our said lord the king as a soldier in the said corps of, &c. and that the said S. D. on, &c. at, &c. in order to be attested, pursuant to the statute in that case made and provided, did in his proper person appear before H. esquire, then being one of the justices of our said lord the king, assigned, &c. And the jurors, &c. do further present, that the said S. D. late of, &c. being an evil disposed person, and contriving and intending to cheat and defraud the said D. K. of his monies, and to make it be believed that the said S. D. was at liberty, and eligible to be enlisted to serve our said lord the king as a soldier in the corps of, &c. on the said, &c. with force and arms, at, &c. aforesaid, unlawfully, knowingly and designedly, did falsely pretend to the said H. (he the said H. then and there being such justice as aforesaid, and then and there having sufficient and competent power and authority to attest persons to serve the said lord the king as soldiers in the said corps of, &c.) that he the said S. D. was not then an apprentice (meaning that the said S. D. then and there to wit, on the said &c. at the said, &c. when he so appeared before the said H. the justice aforesaid, in order to be attested as aforesaid, was not an apprentice, and that he the said S. D. was then and there at liberty and eligible to be enlisted to serve our said lord the king as a

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(r) See other precedents, 11 Leach, 17. Starkie, 474, and general note, ante 996 to 1000.

soldier in the said corps,) by means of which said false pretence he the said S. D. unlawfully, knowingly and designedly, did obtain from the said D. K. the sum of ——. of the proper monies of the said D. K. with intent to cheat and defraud the said D. K. of the same. Whereas in truth and in fact, the said S. D. on the said, &c. at, &c. aforesaid, at the time when he so appeared before the said H. the justice aforesaid, in order to be attested as aforesaid, was an apprentice, and was not at liberty and eligible to be enlisted to serve our said lord the king as a soldier in the said corps, and whereas in truth and in fact, the said S. D. was then, to wit, on, &c. an apprentice to C. D., and whereas in truth and in fact, he the said S. D. was not then, to wit, on, &c. at liberty and eligible to be enlisted\* to serve our said lord the king as a soldier in the said corps, to the great damage, &c. [*Second count like first, only laying the money to be the king's, and with intention to defraud him. Third count not so full and stating the pretence to be made to the serjeant, and obtaining the money from him with intent to defraud him. Fourth count, same as third, only stating the money to be the king's with intent to cheat his majesty.*]

[\*1018]  
2nd, 3rd,  
and 4th  
counts,

That on, &c. at, &c. certain persons united together and formed themselves into a certain lawful and beneficial club, or society, called, &c. (as the name may be,) under certain printed articles, rules, orders or regulations, made for the good order and government of the said club or society, and then and there, and on divers other days and times between that day and the third day of May, in the twenty-ninth year, &c. contributed and paid divers large sums of money, amounting in the whole to a large sum of money, to wit, the sum of one hundred pounds and upwards, of lawful money into the said club or society, and deposited the same in a certain box, left in the dwelling-house of one T. R., at Kidderminster aforesaid, commonly called or known by the name or sign of, &c. [*as it may be,*] and there kept, for the use, benefit and advantage of the members of the said club or society for the time being. And the jurors, &c. do further present, that in and by a certain article of the said rules and orders of the said club or society, it is declared, ordered and agreed, that, &c. [*here recite the article relating to the payment of money towards the funerals of the members' wives.*] And the jurors, &c. that on the same day and year last aforesaid, at, &c. aforesaid, one L. P. late of, &c. one A. B., one C. D., &c. [*here insert the rest of the members' names which appear by the club-book to be existing at this time,*] were members of the said club or society, contributing and paying mo-

On 30  
Geo. II. c.  
24. s. 1. a-  
gainst a  
member  
of a bene-  
ficial club  
or society,  
for ob-  
taining  
money  
belonging  
to the rest  
of the  
members,  
under  
false pre-  
tences.  
(s)

(s) See a similar precedent, Cro. C. C. 177.

ney into and for the use of the said club or society, that is to say, for the general benefit and advantage of all the members thereof at the said house of the said T. R. for the purpose, amongst other things, mentioned, declared and contained in the said article above-mentioned and set forth. And the jurors, &c. do further present, that on, &c. last aforesaid, at, &c. aforesaid, a large sum of money, to wit, the sum of one hundred pounds, [*this need not be the exact sum, let it be something under the sum contained in the box at this time,*] of like lawful money was and remained in the said box, kept for the purpose in that behalf aforesaid, in the said house of the said T. R. there before then deposited therein, by and for, and on the behalf of all the members of the said club or society. And

[\*1019] the jurors,\* &c. do further present, that by the assent and concurrence of all the members of the said club or society, it had been usual and customary during all the time aforesaid, (except the nights on which the said club or society had been there holden,) for the members of the said club or society, having a right or occasion to withdraw, or receive any money to which they had been entitled by the articles, rules and orders of the said club or society, from and out of the said box, to apply to the said T. R. for the payment of the same, upon condition that he the said T. R. should be repaid the same from and out of such money contained in the said box, for the purpose in that behalf aforesaid, on some subsequent night on which the said club or society should be holden, at the said house of him the said T. R. at K. aforesaid. And the jurors, &c. that the said L. P. well knowing all and singular the premises aforesaid, on, &c. with force and arms, at, &c. aforesaid, unlawfully, knowingly, and designedly, did falsely pretend to the said T. R. that the wife of him the said L. P. was then dead, and that he the said L. P. then wanted thirty shillings to bury his said wife, by means of which said false pretences he the said L. P. then and there unlawfully, knowingly and designedly, did obtain of and from the said T. R. the said sum of thirty shillings, with intent then and there to cheat and defraud A. B., C. D., &c. [*the other members of the club,*] of the same, whereas in truth and in fact, the wife of him the said L. P. was not dead at the said time he so made the false pretences to the said T. R. as aforesaid, and whereas in truth and in fact, he the said L. P., at the time of the false pretences, did not want the said sum of thirty shillings, or any sum of money whatsoever, for the purpose of burying his wife, or of any person whatsoever, having then lately been the wife of him the said L. P. to the great damage, &c. [*as ante 1013*]

That A. B. late of, &c. on, &c. at, &c. having in his custody and possession a certain parcel to be by him delivered to Maria, Countess Dowager of Ilchester, upon the delivery of which he was authorised and directed to receive and take the sum of 6s. and 6d. and no more, for the carriage and portage of the same; yet, that the\* said A. B. produced and delivered to T. H. then being servant to the said countess of I. the said parcel, together with a certain false and counterfeit ticket, made to denote that the sum of nine shillings and ten-pence was charged for the carriage and portage of the said parcel, and unlawfully, knowingly and designedly, did falsely pretend to the said T. H., that the said false and counterfeit ticket was a just and true ticket, and that the said sum of nine shillings and ten-pence had been charged and was due and payable for the carriage and portage of the said parcel, and that he the said A. B. was authorised and directed to receive and take the said sum of nine shillings for the carriage and portage of the said parcel, by means of which said false pretences defendant did unlawfully, knowingly and designedly, obtain of and from the said T. H. the sum of three shillings and four-pence, of the monies of the said countess, with intent to cheat and defraud her of the same, whereas in truth and in fact, &c. [*negative the pretences and conclude "to the damage, &c."* as ante 1013.]

On 30 Geo. II. c. 24. for obtaining more than the sum due for carriage of a parcel by producing a false ticket. (i) [\*1020]

That before and at the time of the committing of the offence hereinafter next mentioned, that is to say, on, &c. at, &c. one C. R. was lawfully possessed of and had in his hands and possession certain securities for the payment of money, that is to say, two bills of exchange, one of the said bills of exchange being for the payment of the sum of one hundred pounds, and the other of the said bills of exchange being for payment of the sum of three hundred and fifty pounds. And the jurors, &c. do further present, that H. P. late of the said, &c. being an evil disposed person, and well knowing the premises, on the said, &c. at, &c. aforesaid, falsely, fraudulently, deceitfully, unlawfully, knowingly and

Indictment for obtaining two bills of exchange under pretence of getting same discounted for the prosecutor. See 52 Geo. III. c. 64. which extends to 30 Geo. II. c. 24. to choses in action. (u)

(r) This was the indictment against Douglass, 1 Campb. 212. It was there holden, that a *basket* was sufficiently described as a *parcel* within the statute. It was also holden, that if money, as in this case, be obtained from the servant who had money of his master in hand at the time it may be well laid to be the property of the latter but if he had not money enough of his employer in his hands at the time, he

must be stated to be the person defrauded. See an indictment for pretending money had been paid into the bank, held bad on a variance in evidence, 1 Campb. 494. See the indictment for pretending a wager, 3 T. R. 98.

(u) As the offence is created by *one* statute and the punishment imposed by *another* the indictments should conclude against the statutes.

designedly, did pretend to the said C. R., that he the said H. P. could immediately get the said bills of exchange discounted by a friend of him the said H. P. at the India house, and would pay over the proceeds thereof to him the said C. R. by means of which said false pretences he the said H. P. did then and there unlawfully, knowingly and designedly, obtain of and from the said C. R. the said bills of exchange (the said bills of exchange then and there being the property of the said C. R., and the said sums of money payable and secured by and upon the said bills of exchange then and there being due and unsatisfied to the said C. R. the proprietor thereof with intent to cheat and defraud the said C. R. of the said several bills of exchange. Whereas in truth and in fact; he the said H. P.,\* at the time of making the said false pretences, well knew that he could not get the said bills of exchange discounted by any friend of him the said H. P. at the India house, and whereas in truth and in fact, at the time of the making the said false pretences as aforesaid, he the said H. P. well knew that he was utterly unable to discount, or get discounted, the said bills of exchange for the said C. R., and whereas in truth and in fact, at the time of making the said false pretences as aforesaid, he the said H. P. did not intend to discount, or to get discounted, the said bills of exchange for the use of the said C. R., or to pay over the proceeds of the said bills of exchange to the said C. R., but on the contrary then and there intended fraudulently to cheat and defraud the said C. R. of the same, to the great damage of the said C. R., to the evil example, &c. and against the peace, &c. and against the form of the statutes (u) in such case made and provided. *[Add a second count the same as first only stating the false pretence to be that defendant would get said bills discounted, and immediately pay over the proceeds thereof to the prosecutor.]*



## FORGERY. (a)

### PRELIMINARY NOTES.

Forgery\* may be defined to be the false making, or alteration of such writings, as either at common law or by statute are its objects, with intent to defraud another; each part of which definition we shall respectively examine, though not exactly in its order. First we will enquire in respect of what things the offence may be committed. Secondly what acts are necessary to complete it, and thirdly, with what intent the party must be actuated, to render him thus highly criminal. [\*1022]

I. *In respect of what things may forgery be committed.*— Forgery, at common law, seems only to have been a species of fraud, and is, therefore, often intermingled with false personating and other means of defrauding; like them it was a mere misdemeanour, punishable as other offences of that degree, at the discretion of the court in which the offender was convicted. This circumstance may account for the doubts entertained by Hawkins, whether, at common law, forgery could be committed of any documents but such as were of a public kind; for in the infancy of commerce, when no peculiar severity distinguished this offence from common frauds, an accurate discrimination on the subject was of comparatively small importance, Hawk. b. 1. c. 70. s. 11. These doubts were, however, entirely removed by the decision in Ward's case, who was prosecuted by information filed by the attorney general for forging a release of acquittance on a sum of money, and it was objected on his behalf, that the matter was not public in its nature nor under seal. These objections were, however, over-ruled, and was held, that forgery at common law might be committed in respect of any writing whatever, by which another might be defrauded. A distinction, at the same time, was marked out between forgery\* and fraud; that the last must actually take effect, while the first was complete, though no one was actually injured, if the tendency and intent to defraud were manifest. The sentence of the defendant in this case was to pay a fine of 500*l.* stand in the pillory, and be committed till payment of the sum imposed on him, see this case at large, 2 Ld. Raym. 1461. The counterfeiting of the privy-seal of a cer- In respect of what things forgery may be committed at common law. [\*1023]

(a) As to the offence, &c. in general, see Hawk. b. 1. c. 51. and 70. Com. Dig. Forgery, 4 Bla Com. 247. to 250. 2 East. P. C. 840. to

1003. Bac. Abr. Forgery. Burn, J. Forgery. Williams, J. Forgery. Dick, J. Forgery.

tificate of holy orders, of wills and deeds, of licenses from barons of the exchequer to compound debts, of protections to members of parliament, and of all records, was always considered as forgery, Hawk. b. 1. c. 70. s. 8, 9, 10. And where a person confined under an attachment for a contempt in a civil cause, counterfeited a discharge as from the creditor, in the original action, to the sheriff and gaoler in whose custody he was detained, by which he obtained his discharge, he was holden to be guilty of forgery, though the order was a mere nullity and the discharge under it illegal, 2 East, P. C. 862. As, therefore, every kind of writing seems on the doctrine of these cases, to be a thing in respect of which forgery, at common law, may be committed, we come immediately to the cases in which the legislature has punished it with greater severity, and in far the most numerous of which it has made it capital.

In respect of what things forgery may be committed by statutes.

*Records.*—It seems singular that the highest description of documents, the records of courts of justice, should not be protected with laws so severe as the lowest kind of negotiable securities. We have seen in considering larceny of these writings, that by 8 Hen. VI. c. 12. s. 13. it is felony for any clerk or other person not only to steal but to avoid “any record or parcel of a writ, return, panel, process or warrant of attorney” of the courts of common law. This term includes every kind of alteration which affects the validity of the proceedings, whether it actually causes the judgment to be reversed, or only makes it avoidable, 3 Inst. 72. but clergy is not taken away. And we have seen that this act does not extend to judges, who are only liable to be fined under 8 Rich. II. c. 4. “for falsely entering pleas, raising rolls or changing verdicts to the disherison of any one,” ante 928. But all offences of this kind, however committed, are high misdemeanours as perversions of public justice.

Writings relating to the public funds, and the stocks of public companies.

[\*1024]

As soon as the national debt became so extensive, as to have for its sharers the large portion of the monied interest of the kingdom, it was thought necessary to secure the property of the holders from the depredations to which it was liable from its nature, by severe provisions. Accordingly the 8 Geo. I. c. 22. s. 1 makes it felony without benefit of clergy to forge or counterfeit any letter of attorney, or other authority or instrument to transfer, assign, sell or convey\* any share in the stocks of public companies then established by act of parliament, or to receive any annuity or dividend from a public company, to forge the name of any proprietor of stock to such an instrument, to endeavour to procure the stock, &c. to be transferred, or the annuity or dividend received by such means, and to personate a proprietor of stock for such purposes. The provisions of this act are by 31 Geo.

II. c. 22. s. 77. extended not only to all public companies established in the interim, but to all the legislature should in future sanction; and this last extension was confirmed by 4 Geo. II. c. 25. s. 15. which continued the corporation of the bank of England. Even these laws, were, however, evaded; and it became necessary to provide by 33 Geo. III. c. 30. that any person who should wilfully make any transfer of interest of any kind in bank stock, annuities or funds, not being the owner, with intent to defraud the governor and company of the bank, or any corporation of individuals, s. 1.—or forge any transfer or utter when forged, with a similar intent, s. 2.—or wilfully make any false entry in the books, alter one already made, or falsify accounts with such design, s. 3. should be guilty of felony without benefit of clergy. The same act punishes with transportation for seven years any person employed in the bank, who wilfully makes out and delivers a dividend warrant for more or less than the party is entitled to receive. The 9 Geo. I. c. 12. s. 4 makes it capital to forge orders for the transfer of annuities payable at the exchequer: and as any assignment or transfer of bank, South Sea and East India stock, must be signed by the party making it, or by attornies lawfully anthorised in writing under hand or seal, attested by two credible witnesses, the forging of either the name of the party himself or of witnesses, and the uttering or publishing any instrument so subscribed with a forged name, are by 37 Geo. III. c. 122. made felony; but punishable only with seven years transportation, or such lighter punishment as the court may award. When the 35 Geo. III. c. 66. and 37. Geo. III. c. 46. made certain annuities created by the Irish parliament transferrable, and the dividends on them payable at the bank of England, the forgery of receipts for subscriptions to loans and debentures, and the altering any part of them, is made capital. These statutes also re-enact the provisions of 8 Geo. I. c. 22. s. 1. and 33 Geo. III. c. 30. to which we have already alluded; they also make the forgery of dividend warrants in pursuance of their regulations, and indorsements thereon, felony without benefit of clergy. In the construction of these acts, it has been holden that a party may be indicted for forging a transfer of stock standing in the name of a person by whom it was never accepted, and although the transfer was not attested\* by two witnesses, 2 Leach, 732.: indeed it was holden that the forgery would have been complete, though no stock had ever passed to the party in whose name the defendant counterfeited the transfer, Id. ibid. By 48 Geo. III. c. 1. s. 9. forging exchequer bills is made capital: the same provision is made for counterfeiting the hand-writing of the receiver general, 46 Geo. III. c. 150. s. 110.—of the trea-

[\*1025]

suror of the ordnance, 46 Geo. III. c. 45. s. 9.—of the receiver general of the excise, 46 Geo. III. c. 75. s. 8.—of the receiver general of the stamp duties, 46 Geo. III. c. 76. s. 9.—of the receiver general of the post office, 46 Geo. III. c. 83. s. 9.—of the surveyor general of the forests, 46 Geo. III. c. 142. s. 14. or of their supervisors, clerks, or deputies, sufficiently authorised,—to any draft, instrument, or writing whatever, in order to receive any money in the custody of the bank of England. And in all the acts for raising loans it is usual to insert a clause making it felony without the benefit of clergy, to counterfeit a receipt for the payment of any part of the contributions intended, see 36 Geo. III. c. 74. s. 22. 41 Geo. 3. c. 24.

Notes and securities of the bank of England and other public companies.

Soon after the establishment of the bank, the legislature began to protect it with peculiar care against forgery. By 8 and 9 W. III. c. 20. s. 36. to counterfeit the common seal of the bank, any sealed bank bill, or bank note, and the rasing or altering any indorsement on them, are made felonies without benefit of clergy. In the construction of the latter part of this act it has been holden, that to erase a receipt for part of the money in a bank post bill by means of a liquor, is *rasing* an *indorsement* within the meaning of the legislature, 3 P. Wms. 419. 2 East P. C. 882, 3. By 15 Geo. II. c. 13. s. 11. to forge any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the seal of the bank of England, or any indorsement on such instruments, and to offer such forgeries, or demand money on them, knowing them to be counterfeit, are made offences of the same degree. The 11 Geo. I. c. 9. s. 6. had made the forging, altering, and erasing of any bank note or bill of any description, and the uttering, exchanging, or demanding the amount of it at the bank, felony, but not having taken away clergy, that was done by the last mentioned provision. Not only has all forgery on the bank been thus severely punished, but every act tending to it has been carefully provided for. The 13 Geo. III. c. 79. s. 1. enacts, that if any person, not lawfully employed in the service of the bank, shall make or use, or knowingly have in his possession, without lawful excuse, which he is compelled to establish, any frame, mould, or instrument for the making of paper with the words *bank of England*, visible on its substance, or make any such paper, or by any means\* procure the words to be visible on paper, he shall be guilty of a capital offence. The second section of the same act makes it a misdemeanour for any person not authorised and appointed as therein mentioned, to engrave, cut, etch, or scrape in mezzotinto, upon any plate whatever, any note or bill containing the words, "*bank of England*," or "*bank post bill*," or any words expressing the sum or

[\*1026]

amount of the bill, &c. or any part thereof, *in white letters or figures on a black ground*,—to use any plate, or any other instrument for the making of such a bill, &c.—to have such an instrument in possession, knowing its uses,—or knowingly to utter and publish a bill, &c. so formed,—punishable with imprisonment for a time not exceeding six months, at the discretion of the court in which the offender is convicted. But it is provided by section 3. that this shall not extend to the case of a person who being possessed of a bill, &c. of the kind prohibited by the statute, shall utter it, by carrying it to the issuers, drawers, acceptors, or indorsers thereof respectively, and using proper means to compel the payment of the money due upon it. The bank, in order more easily to detect forgeries, having ordered a new kind of paper to be made, in which, instead of the bar lines being straight and parallel to each other, as in paper in general, they were to be made curved or waiving, the wire lines to be laid in the same shape, and the numerical account or sum of each note expressed in Roman letters, to be visible on the substance of the paper, it was enacted, that any persons not lawfully authorised for the purpose, making, using, or having in possession without lawful excuse, any instrument for making such paper or marks on it,—actually manufacturing, using, or disposing of such paper, or having it unlawfully in possession,—or, by any means, making the numerical sum appear on the face of the paper, shall be deemed felons, and transported for fourteen years, 41 Geo. III. c. 39. s. 1. But this provision did not restrain the negotiation of instruments previously issued on such paper, or the using paper marked in the way described, which had been manufactured before the passing of the statute, s. 2. 3. 4. By the statute, knowingly purchasing, receiving, or having in possession forged bank notes, or bills, is made felony, and punished with transportation for fourteen years, s. 5. It is also made felony, and punished with seven years transportation, to engrave, or in any way make on a plate any instrument whatever, issued by the bank of England, or part thereof,—to use such a plate, or to retain it in possession,—and to utter any note, &c. engraven by its means, without an authority in writing for that purpose, from the offices who have power to grant it, s. 6. The 45 Geo. III. c. 89. re-enacts most of the former provisions, declares the forgery of all kinds\* of bank negotiable securities, and knowingly uttering them when forged, capital,—and the manufacturing paper like that peculiar to the bank, or having instruments for the purpose in custody, the receiving or having in possession forged bank notes and the engraving plates, using or having in possession tools for the purpose, respectively felonies

[\*1027]

punishable with transportation for fourteen years: the act also contains nearly the same provisoes as the statutes to which it refers; its principal object is to extend the regulations it recites to every part of Great Britain. The decision as to what is a *forgery* within these acts, will be considered whe we enquire into the *act of the counterfeiting*, as they establish general principles applicable to every description of forgery.

South Sea  
company.

When the South Sea company was established by 9 Ann, c. 21. it was made capital to forge or alter any bond or obligation under its common seal, to offer to dispose of such forged bond, and to demand any money as due upon it, s. 57. The 6 Geo. I. c. 4. s. 56. extends this provision generally to the common seal: the 12 Geo. I. c. 33. makes the forgery of an indorsement on South Sea bonds, felony without benefit of clergy: and the 6 Geo. I. c. 11. s. 50. provides in the same way, for the forgery of receipts for contributions or warrants for the payment of dividends which the company are authorised to issue.

East India  
Company.

The 12 Geo. I. c. 32. s. 9. enacts, that if any person shall forge any bond or obligation under the common seal of the East India company, or any indorsement or assignment thereon, or shall knowingly utter or publish the same with intent to defraud, he shall be guilty of felony without benefit of clergy.

Plate glass  
manufac-  
tory, and  
London  
and Royal  
Exchange  
assurance  
compa-  
nies.  
Stamps.

The British cast plate glass manufactory, is by 13 Geo. III. c. 38. s. 28. revived by 33 Geo. III. c. 17. s. 23. protected in the same way, as to its seal, or any deed or writing under it. And similar provisions are made as to the polices and bills, as well as the bonds, of the London, Globe, and Royal Exchange assurance companies, 9 Ann, c. 21. 6. Geo. I. c. 4. 6 Geo. I. c. 18. s. 13. 39 Geo. III. c. 83. s. 22.

[\*1028]

All the acts requiring stamps to be affixed to written documents, contain clauses making the forgery of the stamps therein required,—the knowingly vending or uttering any papers marked with forged stamps,—and the using any such stamp with intent to defraud his majesty, capital felonies; see Index to the Statutes at large, title *Stamps*. The terms of the general consolidating act, 27 Geo. III. c. 13. s. 46. are as follows, “That if any person shall counterfeit, or forge, or procure to be counterfeited or forged, any stamp, seal, or *mark*, to resemble any seal, stamp seal or *mark*, directed to be allowed or used, or provided, made, or used in pursuance\* of this or any former act or acts of parliament, relating to the duties under the management of the said commissioners for managing the duties on stamped vellum, parchment and paper, for the purpose of denoting the said duties or any of them; or shall counterfeit or resemble the impression of the same with intent to defraud his majes-



ty, his heirs or successors, of any of the said duties ; or shall utter, vend, or sell any vellum, parchment or paper, or other matter or thing, with such counterfeit mark, or stamp thereupon, knowing the same to be counterfeit, or shall privately *or fraudulently* use any seal, stamp, or mark, directed or allowed to be used by this or any former act or acts with intent to defraud his majesty, his heirs and successors, of any of the said duties ; every person so offending and being thereof lawfully convicted, shall be adjudged a felon, and shall suffer death as in cases of felony, without benefit of clergy."

The variances from this form, in the variety of other acts on the subject, are not very material. Some of them, as 37 Geo. III. c. 90. s. 5. which imposes additional duties on a great variety of instruments, omit the words *seal or mark* ; others, as the regulations respecting bills of exchange, and other writings not under seal retaining the words *or mark*, omit the word *seal* ; the 31 Geo. III. c. 25. s. 29. and 39 Geo. III. c. 107. s. 25. after the word *sell*, add *or expose to sale* ; and the 41 Geo. III. c. 86. s. 16. which grants additional duties on cards and dice, ale licences, probates of wills, letters of administration, and certain indentures, leases, and other deeds, omits the words *or fraudulently* before the term *use*, and adds also that it shall be felony without benefit of clergy to forge " any mark or name provided by the commissioners under that act for the wrapping or inclosing any dice, or making any part of or being affixed to such wrapper."

The statute 10 Ann, c. 19. s. 97. directs the commissioners of customs to provide seals or stamps for the marking of imported linens, and the commissioners for managing the duties on silks, callicoes, linens and stuffs, printed, painted, stained, or dyed in Great Britain, to do the same as to the articles thus subjected to their direction, and enacts, that if any person shall counterfeit or forge any stamp or seal, to resemble any stamp or seal provided in pursuance of that act, or shall counterfeit or resemble the impression of the same upon any of the commodities chargeable by that act, thereby to defraud the crown of any of the duties thereby granted, he shall be guilty of felony without benefit of clergy ; and if any one shall knowingly sell any of the articles chargeable by virtue of that statute, to which a counterfeit stamp is affixed, and with intent to defraud the crown, he, and all aiders, abettors, and assistants, shall forfeit 100*l.* and stand in the pillory for two hours.

The\* forging stamps on plate was formerly punishable by [\*1029] 12 Geo. II. c. 26. s. 8. with a forfeiture of 100*l.* and imprisonment on default of payment ; but this being found insufficient, the 31 Geo. II. c. 32. s. 14. makes it a capital felony to counterfeit the marks or stamps used in pursuance of that statute—to transpose a stamp or mark from one piece of plate

to another—knowingly to sell, exchange, expose to sale, or export any plate to which forged stamps or marks are affixed—and knowingly to have any counterfeited stamp or mark in possession. The 24 Geo. III. c. 5. s. 26. extends these provisions to the mark of the king's head which it imposes, and to some other cases omitted in the former statute ; but the 38 Geo. III. c. 69. which allows the manufacture of gold wares of a lower standard than before, makes the forgery of the marks it directs a single felony punishable with transportation for seven years, while it leaves the punishment of those who offend against the former act, capital.

Official  
papers,  
securities,  
and docu-  
ments,

By 29 Eliz. c. 17. s. 3. every idle and wandering soldier or mariner who shall forge a testimonial from a captain, which he is there compelled to keep, is guilty of felony without benefit of clergy. But when justices of assize, of gaol delivery, and of the peace, are empowered to try the offenders, and to execute them on conviction, a proviso is made “ except some honest person valued, at the last subsidy, next before the time, to ten pounds in goods, or forty shillings in lands, or else some honest freeholder, as by the said justices shall be allowed, shall be contented before such justice as such person shall be arraigned of felony to take him into his service for one whole year then next following,” and enter into a recognizance to keep him for the time, and bring to the next sessions or assizes after its expiration : and if he depart within the year, he is guilty of a capital offence.

The 2 and 3 Ann, c. 4. which directs the public registering of all deeds, conveyances and wills, of any honors, manors, lands, tenements, or hereditaments, within the West Riding of the county of York, makes the forging of any memorial or certificate of registry punishable, as the forging of false deeds to molest the freehold or inheritance in landed estate, see post 1031. And this is extended by 5 Ann, c. 18. to the entry of the acknowledgment of any bargainer in any sale, and to all memorials, certificates and endorsements which it specifies. The 7 Ann, c. 20. makes similar regulations as to Middlesex ; and the 8 Geo. II. c. 6. s. 31. extends the provisions before applicable only to the West, to the North Riding of Yorkshire.

[\*1030] The 12 Geo. I. c. 32. for better securing the monies and effects of the suitors of the court of Chancery, by s. 9. makes it a capital felony\* to forge the name or hand of the accountant general, the register, the clerk of the report office, or any cashier of the bank to any instrument or writing whatsoever, in order to obtain any money or effects of the suitors, or any certificate or other writing therein mentioned of the same officers. Under this act, forging a writing purporting to be an office copy of a report or certificate of the accountant general that money has been paid in the bank, or forging an office

copy of a certificate or receipt of one of the cashiers of the bank is capital, 1 Leach, 61. The counterfeiting of Mediterranean passes to protect British vessels from the powers of Barbary is by 4 Geo. II. c. 28. made felony without benefit of clergy; and, as this is an offence which might probably be committed abroad, the second section of the same directs, that when this is the case it may be tried in any part of Great Britain by virtue of a special commission. We have already seen that the forgery of documents relating to marriage, as registers and licences, is punishable with death under 26 Geo. II. c. 33. s. 16. ante 711.

By 31 Geo. II. c. 10. s. 24. it is made capital to personate any seaman, his relative, creditor or personal representative, for the purpose of receiving wages or prize money in that character, or to forge any letter of attorney, bill, ticket, certificate, assignment, last will, or other power or authority whatsoever with a like intention. And this provision is by 9 Geo. III. c. 30. s. 6. extended to uttering or publishing any of those documents; by 32 Geo. III. c. 33. s. 23. to the counterfeiting and uttering respectively of tickets for wages of inferior or non-commissioned officers, or marines, for service on board his majesty's ships—to certificates of discharge from naval hospitals—and to bills of remittance or duplicates of these papers; by s. 34. of the same act to petitions for certificates to enable persons to obtain letters of administration, to seamen of the same inferior rank, to the certificates themselves, and to the checks and other instruments which the act itself requires. The 49 Geo. III. c. 123. s. 13. regulating orders and certificates for the receipt of prize money, makes it capital to fabricate or publish the documents to which it refers; and s. 14. declares any alteration in the name of the prize or bounty money originally expressed in them as a misdemeanour, and orders it to be punished with the same penalties which are usually inflicted for offences of this degree. Under these acts it has been holden, that the forgery of a seaman's will is complete, though the Christian name with which it is signed is erroneous, 1 Leach, 20. The provisions, however, extend only to king's ships; and, therefore, if the will of a seaman on board a private vessel, or one having letters of marque only, be counterfeited, the offender must be indicted under\* the general statutes which relate to the fabrication of testaments, 1 Leach, 448. n. a. On indictments for forgeries relative to seamen, the master book of the navy office is admissible evidence, 1 Leach, 20. [\*1031]

By 24 Geo. III. stat. 2. c. 37. s. 9. forging franks on letters to avoid payment of postage, is made a single felony and punished with transportation for seven years. The 42 Geo. III. c. 58. makes the forging, publishing, or altering of

receipts for contributions raised towards the Irish loan or Irish debentures, capital. All the acts authorising the issue of exchequer bills, make it felony without benefit of clergy to forge them, or any indorsement on them, to tender them when forged in payment, or to demand money in exchange for them, see 42 Geo. III. c. 1. s. 41. Formerly it was usual in all the lottery acts to make the forgery of lottery tickets and uttering them when forged, capital, but it is now made only a clergyable felony. To counterfeit the hand of the receiver of profines at the alienation office is, by 42. Geo. III. c. 54. s. 47. felony without benefit of clergy: and the 42 Geo. III. 116. which consolidates all the acts for the redemption and sale of the land tax makes the forgery of all documents materially relating to purchased exemptions, capital.

Private  
papers,  
securities  
and docu-  
ments.

[\*1032]

The counterfeiting of private securities has also been punished with great severity, and in many instances made capital. By 5 Eliz. c. 14. s. 2. the forgery of "any deed charter or writing sealed, court-roll, or the will of any person in writing," to the intent that the state of freehold or inheritance of any landed property, or the right thereto might be "molested, troubled, defeated, recovered or charged;" and the "pronouncing, publishing or shewing forth in evidence" any instrument so forged, were made the grounds of an action on the statute by which the party grieved was to recover double costs and damages; and the offender was also to be set in the pillory, his nostrils to be cut and seared with a hot iron, his person to be consigned to perpetual imprisonment, and all the profits of his lands during his life, to be forfeited to the crown. But the forgery of writings to the injury of termors was not made so highly penal. The second section of the act, makes forgeries with the intent to injure those who have estates or interests for term of years punishable with double costs and damages, the pillory, the loss of one ear and imprisonment for twelve months without bail or mainprize. The second offence of either kind was made felony without benefit of clergy, s. 7. But this act has now fallen into disuse on account of the 2 Geo. II. c. 24. made perpetual by 9 Geo. II. c. 18. which enacts that to forge "any deed, will, testament, bond, writing, obligatory bill of exchange, promissory note\* for payment of money, indorsement or assignment of any bill of exchange or promissory note for the payment of money, or any acquittance or receipt, either for money or goods," with intent, to defraud any person whatsoever, [and by 31 Geo. II. c. 22. s. 78. any corporation whatsoever] or shall *utter or publish* as true any instrument so forged with the like intent shall be deemed guilty of felony without benefit of clergy. And the 7 Geo. II. c. 22. passed to remedy the defects which experience had

found to exist in this statute, extends its provisions to the counterfeiting or uttering "any acceptance of any bill of exchange, or the number or principal sum of any accountable receipt for any note, bill or other security for payment of money, or any warrant or order for the payment of money, or the delivery of goods." But the 2 Geo. II. c. 25. s. 4. expressly provided that its regulations were not to extend to Scotland. And, therefore, the forgery of a note, made payable at Aberdeen, was not by this act within the English laws against forgery, though it is doubtful how far this would apply to an uttering in England, 1 Leach, 68.

As to the instruments which come within the meaning of these acts, a variety of decisions have taken place, many of which relates to the general principals of forgery, and will therefore be stated hereafter. Those only which explain the extent of the terms used in the acts will be enumerated here. With respect to what is an "acquittance or receipt for money or goods" within the meaning of the 2. Geo. II. c. 25. it has been holden that the name of the holder of a navy bill signed on a proper receipt stamp, and affixed to the instrument, is not in itself *prima facie*, a receipt for money, but as it is so considered in the navy-office, it may by proper averments in the indictment, be shewn in reality to be effectual as such, and consequently the object of forgery, 2 Leach, 624. (b) And if a person is employed by the personal representatives of a public accountant to settle intricate accounts with government, and he, in order to set the estate free from the claims of the navy board, produces fabricated vouchers as from workmen employed by the testator, he may be convicted of forging "receipts and acquittances for money," within the statute. 2 Leach, 877. But this is not the case with a scrip receipt, in which the blank for the name is not filled up with the name of the subscriber. 2 Leach, 557. Nor does the act apply to a forged receipt for bank notes, they not being regarded as in strictness, either goods or money. 1 Leach, 182.

As\* to what shall be considered as a "warrant or order for [\*1 033] payment of money or delivery of goods," within 7 Geo. II. c. 22. it has been holden that the document forged, must be such as appears to give to the bearer a disposing power over the property which he demands; it must assume to transfer the right at least of the custody of the goods to the offender; and not be a mere request to a third person to deliver the articles in question which he may evidently refuse if he pleases.

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(b) The assignee of a certificate witness to prove the forgery.  
to a navy bill is not a competent Leach, 634.

Fost. 119. But the essence of the crime does not consist in the order being such as not only supposes the right in the party supposed to make it, but as will appear to the party to whom it is directed, to throw on him the duty of compliance. It is sufficient if it assumes, on the face of it, to be an instrument of this kind. The distinction is, that when an order is so drawn as to induce a belief in the person to whom it is uttered, that it will be complied with, the offence is within the act, though it could not deceive the party on whom it is drawn; but if it seems to leave the compliance optional, and applies rather to the favour than the justice of the person to whom it is addressed, it is not within the meaning of the statute, because the individual taking it, can place no reliance on its credit. 1 Leach, 95. in notis. Thus a note as from an overseer of the poor to a tradesman, desiring him to deliver goods to the prisoner, is not an object of forgery within the act. Fost. 119. But to utter a feigned order on a banker with whom the person whose name is used has no cash as a valid draft is capital. 1 Leach, 94. Thus, in further illustration of this distinction, a request counterfeited as by a customer to let the bearer have articles of merchandize does not amount to felony; but is a mere obtaining goods under false pretences. 1 Leach, 114. So also the order must not merely be imperative in its terms, but it must be counterfeited in the name of one who assumes to have the disposing power over the things to be transferred; and not of a son or agent unless expressly averred to have the controul over the property in question. 1 Leach, 540. The order must be directed to a specific person, who may be presumed by those to whom it is uttered to have the possession of the things to which it relates, and not a mere desire that the party should have them, without, on the instrument itself, specifying the individual to whom it is addressed. 1 Leach, 540. But it is not necessary that the goods should be specified in the order; so that to forge a paper in the name of a silversmith, for the redelivery of plate from Goldsmith's Hall, in the words "please to deliver my work to the bearer," is capital. 1 Leach, 53. Nor is it requisite that the order should be such an one as a statute requires; for to counterfeit a paper in the name of a seaman for the payment of prize-money, by a seaman [\*1034] which\* is invalid as not being framed according to the directions of 32 Geo. III. c. 34. s. 2. is felony. 2 Leach, 883. Neither is it necessary that the instrument should be such as is commonly termed a warrant or order for the payment of money, but it will suffice if that be in reality its effect; so that a bill of exchange may be laid in these terms, though to call it by its usual denomination seems more accurate. 1 Leach, 226. 2 East, P. C. 944. It is also clear that the statute is not,



as has been objected, confined to orders made in the course of commercial transactions. 2 Leach, 883. 2 East, P. C. 945.

As these acts seem only to have extended to inland bills of exchange, the 43 Geo. III. c. 139. made the counterfeiting or uttering any foreign bill, promissory note, or order for payment of money a single felony, and punished it with transportation for fourteen years. s. 1. And, by the same act, engraving, or by any device making plates for the fabrication of any of the above instruments, for the first offence is made a misdemeanour, punishable with imprisonment for any time not exceeding six months, fine, or whipping, and for the second offence, transportation for fourteen years is directed. s. 2. The 45 Geo. III. c. 88. extends all former provisions to to every part of Great Britain, and reciting the principal statutes on the subject of forgery, proceeds to incorporate them in one general provision. By this act it is declared felony without benefit of clergy; to "falsely make, forge, or counterfeit, or alter or cause or procure to be falsely made, forged, counterfeited, or altered, or willingly act or assist in the false making, forging, counterfeiting, or altering any deed, will, testament, bond, writing or obligatory bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange or promissory note for payment of money, acceptance of any bill of exchange, or any acquittance or receipt, either for money or goods, or any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money or delivery of goods, with intention to defraud any person or persons, body or bodies, politic or corporate whatsoever; or shall offer, dispose of, or put away any false, forged, counterfeited, or altered deed, &c. [*as before*] with intention to defraud any person or persons, body or bodies, politic or corporate, knowing the same to be false, forged, counterfeited, or altered." (c) As this act is to be taken *pari materia*, with those previously existing on the same subject,\* all the constructions of their language will equally apply to the same terms used in the more recent provision. [\*1035]

The notes of private banks clearly come within the language of the last and of the former statutes, as the objects of capital forgery. But it was thought necessary, not merely to punish the actual counterfeiting, but in a case where the temptation is so strong, to prevent all attempts tending to it, in the same way as we have seen, the legislature had previously interposed for the protection of the bank of England. Notes of private bankers.

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(c) This clause is given at length as a specimen of the language of the acts respecting forgery, which are for the most part, nearly similar.

(d) The 41 Geo. III. c. 57. therefore, enacts, that if any person shall make a frame, or mould, or part of such machine, for the making of paper with the name of any person or firm, carrying on the business of bankers, visible on the face of it without a competent authority in writing, or manufacture, or sell any such paper, or by any part procure the name of a banker to be visible on the substance of paper, he shall, for the first offence, be imprisoned for any time not exceeding two years, nor less than six months, and for the second offence be transported for fourteen years, s. 1. By the same act, the engraving, or in any manner making upon a plate, any note or instrument for payment of money, or part of it as of a banker—the using any plate so engraved—having it in custody—and the uttering of any note thus fabricated—are to be visited with similar penalties, s. 2. And to trace, by any contrivance, subscriptions subjoined to any banker's bill or note expressed to be payable to the bearer on demand on a plate, or to have such plate in possession without being able to prove that it came there by innocent means, is punished for the first offence with imprisonment from three to twelve months, and for the second with transportation for seven years. s. 3.

How far the thing forged must be such as, if genuine, will be valid; and how far a proper stamp must be affixed to the counterfeit instrument in cases where a stamp is requisite to render it of any avail.

[\*1036]

We have thus enumerated the principal documents, the forgery of which has been the subject of legislative provision. It may here therefore be proper to observe that it is of no consequence whether the counterfeited instrument be such as if real would be effectual to the purpose it intends, so long as there is a sufficient resemblance to impose on those to whom it is uttered. Whether the fraud be effected on the party to whom an instrument is addressed, or whose writing is counterfeited, or on a third person who takes it upon the credit it assumes, is immaterial. Thus it was anciently holden that the forgery of a protection in the name of a person as being a member of parliament who really was not so, was an indictable offence, Sid. 142. To counterfeit a conveyance with a wrong name, has been deemed within 5 Eliz. c. 14. though it would have been ineffectual if genuine, 1 Keb. 803. 3 Keb.\* 51. The fabrication of an order for payment of a sailor's prize money, is forgery, as we have already seen, though it is invalid as wanting the requisites required by statute 2 Leach, 883. The forgery of an instrument as a last will comes within the statutes although the supposed testator is living, 1 Leach, 449. And it may be collected from a number of cases, that forgery in the name of a person who has no real existence is as much criminal as if there was an intent to defraud the individual whose hand-writing is counterfeit-

ed, 1 Leach, 83. Thus the making of a bill of exchange is within the acts, though all the names to it are fictitious, 2 East, P. C. 957. To counterfeit a power of attorney as by the administratrix and daughter of a seaman who died childless, is capital, Fost. 116. Nor is it necessary that any additional credit should be obtained by using the fictitious name; for where the prisoner indorsed a bill he had found in a feigned name to conceal that it had passed through his hands, he was holden guilty of forgery, though he might have procured him the money on discounting it, by a true indorsement of his own, 1 Leach, 172. So to put a fictitious name on a bill indorsed in bank, in order to circulate it with secrecy, is a similar offence, 1 Leach, 215. And indeed it seems that it is not necessary to constitute forgery, that there should be an intent to defraud any particular person, and a general intent to defraud will suffice, 3 T. R. 176. 1 Leach, 216, 7. in note.

Some difficulty, however, seems to have arisen as to the case of *stamping*, (e) from the peculiar wording of the acts, which make certain stamps requisite. They usually contain a clause "that no bill of exchange, promissory note, or other note, draft, or order, nor any receipt (or other instrument which the act requires to be stamped) shall be pleaded or given in evidence in any court, or admitted in any court to be good, useful, or available in law or equity, unless the vellum, parchment, or paper on which such bill of exchange, &c. shall be engrossed, printed, written, or made, shall be stamped or marked with a lawful stamp, or marked, to denote the rate or duty as by this act directed, or some higher rate or duty in this act contained," see 31 Geo. III. c. 25. s. 2. From hence it was argued that as the words of the act were thus expressed, it would be impossible to give the counterfeited paper in evidence, and, consequently to convict the offender. Some cases there are which at first sight seem to support this opinion. Thus, on an indictment for\* feloniously burning down a house with intent to defraud the insurers, a majority of the judges (f) were of opinion, that as the memorandum indorsed on the policy was not stamped, there never was a valid contract for the prisoner to break, and therefore that his crime was incomplete, 1 Taunt. 102. In Mr. Astlett's case already referred to, it was holden that he could not be convicted of stealing exchequer bills, when the instruments he embezzled were inva-

[\*1037]

(e) This subject seems more properly to be considered here than as a mere matter of *evidence*, as it enters materially into the description of the instrument, in respect of

which forgery may be committed. See the law upon this subject in part considered ante. 1 vol. 556. to 257.

(f) Six to five only.

lidated by a defect in the authority of the officer by whom they were issued, 1. N. R. 1. And it has been decided that a servant in the post-office cannot be guilty under 7 Geo. III. c. 50. s. 1 of taking a draft on a banker in town from a letter drawn on unstamped paper, and drawn more than ten miles from London, 3 Bos. and Pul. 311. But when the same person was afterwards indicted for purloining the letter, the unstamped draft, invalid in itself, was received in evidence against him, 3 Bos. and Pul. 315.

All these cases are, however, very different from the instance of forgery. In them the substance of the offence was in violating a valid contract; in embezzling certain things of a peculiar kind; and in stealing instruments of a certain value to their owner. The objects of larceny must be described on the indictment as they really are, and if shewn in evidence, by reason of any latent defect to be different things of little or no value, the charge is evidently unproved. In forgery, on the other hand, the essence of the accusation is that the instrument is a mere fiction. In the instance of larceny, the offence depends on the thing stolen being real; in that of forgery, on its being counterfeit. In the former case the document must be of a real value, in the latter it is clearly of none. While in the first it is laid as an actual security, in the last it is expressly averred to be a mere pretence. In case of larceny, the want of the stamp is the fault of the prosecutor; in forgery the act of the defendant. It is reasonable to suppose that the legislature in protecting the revenue should refuse to give effect to instruments in which the framers have neglected to observe its directions; but strange to contend, that they at once held out a temptation to forgery, and to a fraud on the revenue, by making the latter the cause of impunity to the former. We find, therefore, that it has been repeatedly decided that in case of forgery, a defect in the stamp will not avail the prisoner, 1 Leach, 257, 8. in notis. And it has even been decided that if there be no stamp at all on a counterfeit promissory note, it may still be forgery, 2 Leach, 703.—though this case seems to go too far; for how can a promissory note, without\* the appearance of a stamp, have such a similitude to a genuine instrument as is requisite to constitute forgery.

The effect of the absence of stamps in criminal cases, after all, seems never to have been properly a question of evidence. The cases where the defendant has been acquitted on this ground, have been those in which the validity of the instrument was necessary to the crime, and the stamp indispensable to the validity of the instrument. The terms of the acts stating that the unstamped papers shall not "be pleaded or given in evidence in any court, or admitted in any court

to be good, useful or available," seem evidently to express the intent of the legislature that they shall not be received in evidence, or recovered upon for civil purposes. Thus Mr. Justice Buller observes, "the stamp acts are merely revenue laws," 2 T. R. 609. and it cannot be supposed that they were intended to influence criminal proceedings: so that it seems at least doubtful, whether, in any case, the want of a stamp, is an objection to the reception of a paper in evidence on the trial of an indictment of any kind; while in case of forgery, it seems clear that a defect in the stamp is immaterial, so that, on the whole, the resemblance is sufficient to deceive.

But though the validity of the instrument if real is thus immaterial, it must not appear on its face, so that no one of common understanding would give it credit. Thus, it will not be forgery to fabricate a will for land as attested by only two witnesses, 2 East, P. C. 953. Nor is it felony to counterfeit a bill of exchange for a sum more than twenty shillings and less than five pounds, without mentioning the abode of the payee and being attested by a subscribing witness; as such an instrument is by 17 Geo. III. c. 30. absolutely void, 1 Leach, 431.

We have now to enquire what act of the offender is necessary to constitute forgery. It is evidently not requisite that the whole instrument should be fictitious. Making a fraudulent insertion, alteration or erasure, in any material part of a true document by which another may be defrauded; the fraudulent application of a false signature to a true instrument, or a real signature to a false one; and the alteration of a date of a bill of exchange after acceptance by which its payment may be accelerated, are forgeries. 1 Hale, 683, 4, 5. 4 T. R. 320. So expunging an indorsement on a bank note with a liquor unknown, has been holden to be an erasure within 8 and 9 W. 3. c. 20. 3 Pr. Wms. 419. But the instrument must, in itself, be false; for if a man merely pass for another who is the maker or indorser of a true instrument, it is no forgery, though it may be within the statute of false pretences, 1 Leach, 229. The instrument counterfeited must also bear a resemblance to\* that for which it is imposed; but need not be perfect or complete: it is sufficient if it is calculated to impose on mankind in general, though an individual skilled in that kind of writings would detect its fallacy. Thus, if it appears that several persons have taken forged bank notes as good ones, the offender will be deemed guilty of counterfeiting them, though a person from the bank should swear that they would never impose on him being, in several respects, defective. 2 East, P. C. 950. And it has been holden that a bank note may be counterfeited, though the paper contains no water-mark, and though the word *pounds* is omitted, that word being supplied

What false making is sufficient.

[\*1039]

by the figures in the margin, 1 Leach, 175. For it was said that in forgery there need not be an exact resemblance, but it is sufficient if the instrument counterfeited be *primâ facie* fitted to pass for the writing which it represents, 1 Leach, 179.

With what intent the forgery must be committed.

The very essence of forgery is an intent to defraud; and, therefore, the mere imitation of another's writing, the assumption of a name, or the alteration of a written instrument, where no person can be injured, does not come within the definition of the offence. Most of the statutes expressly make an intent to defraud a necessary ingredient in the crime, whether it existed or not, is a question for the jury to determine. But it is in no case necessary that any actual injury should result from the offence, 2 Stra. 747. 2 Ld. Raym. 1461,

Accessories, aiders and abettors.

All the principal statutes respecting forgery make the aiders and procurers equally guilty with the actual offender. And the rule that when a statute creates a felony, it makes accessories before and after as at common law, seems to apply to this, as to other offences. But where the procurers are not present at the forging or the uttering, they must be indicted specifically as accessories, and not as principals, 2 East, P. C. 974.

## REQUISITES OF INDICTMENT.

Indictment.  
Venue.

*Venue.*—It is necessary to shew that the forgery took place in the county where the venue is laid: and, therefore, where a counterfeit bill was found on a person in one county where he had resided a year, and the instrument bore date during his residence in another county, it was holden that the venue ought to have been laid in the latter, 2 N. R. 87. So if a note forged by one man, be uttered by another, between whom and the maker an intimate connexion is proved to subsist, this circumstance, coupled with the fact that a number of similar notes were found on the former in the county where the venue is laid, will not be sufficient evidence of itself to support an indictment charging him with the forgery there, 2 Leach, 787, 8.

Indictment.  
[\*1040]

*Recital\* of the forged writing.*—Every indictment for forgery must set forth the instrument charged as fictitious in words and figures, in order that the court may be able to judge from the record whether it is a document in respect of which forgery can be committed, 2 Leach, 808. 1 East Rep. 180. in notis; and though, in general, figures must not be used in an indictment, ante 1 vol. 170, yet it is so necessary to set forth a fac-simile of the instrument forged, that this rule is dispensed with, and the recital should, in all respects,



correspond with the writing charged as a forgery, 2 Bla. Rep. 787. But a mere literal variance, which does not change one word for another, or create any ambiguity in the sense, as "value *reicevd*" for "value *received*" will not be material, 1 Leach, 145. And it was holden that the circumstance of the attestation of the witness, and the words "Mary Wallis, her mark," being inserted as part of the tenor of the note forged, when, in reality, they were added immediately after the prisoner's signature, would not amount to a variance, 1 Leach 58.

The recital of the instrument is usually prefaced by the words "to the *tenor* following, that is to say," "or in the words and figures following," which imports an exact copy. But it has been holden that the words "as follows" are sufficient; that they intend the same, and profess the same exactness, 2 Bla. Rep. 787. ante 1 vol. 233. Certain it is that the prosecutor cannot by varying the terms in which he introduces the instrument relieve himself from any accuracy which is otherwise requisite; and, therefore, it is not material which of the above phrases he may employ.

Though it is sufficient to aver that the defendant forged a certain writing, describing it truly, and setting forth its tenor, it seems more proper to lay it as a certain paper writing, purporting to be the instrument which the statute on which the indictment is framed describes; since the essence of the charge is that it is a fiction: and, therefore, it has been holden sufficient to charge defendants with publishing "as a true will a certain false, forged and counterfeited paper writing purporting to be the last will of A. B." although the words of the act are, "shall forge a will," 2 Bla. Rep. 790. As the word *tenor* imports an exact copy, the word *purport* means no more than the substance of the instrument which appears to every eye that can read it. When, therefore, the tenor of a document is set forth, the purport must necessarily appear, 2 Leach, 660. ante 1 vol. It can never be necessary to state both the *purport* and the *tenor*, that is to say, that the instrument purports to be drawn so and so, and is of the tenor following; and if, in this superfluity of statement, a repugnance should arise, the indictment will be vicious. For instance; where a person was indicted\* for forging an acceptance on a certain bill of exchange *purporting to be directed to one J. K. by the name and description of one J. R. esq. after which the tenor of the bill was set forth from which it appeared that it was really directed as to J. R. and the forged acceptance was made in the name of J. K. the indictment was holden bad, on the ground that the name of one person or thing cannot purport to be another*, 2 Leach, 590. On the same principle, an indictment for forging a bill of exchange directed to Ransom,

[\*1041]

Moreland and Hammersley, stating that it *purported* to be directed to George Lord Kinnaird, William Moreland and Thomas Hammersley, by the name and description of Ransom, Moreland and Hammersley, is bad, because the tenor and purport are repugnant, 2 Leach, 651. The safe way, therefore, to avoid all these difficulties, is either to state that the defendant forged a bill of exchange, &c. [*describing the instrument*] to the tenor and effect following, or that he forged a certain paper writing, purporting to be a bill of exchange, to the tenor and effect following, and then in either case to recite the instrument with all possible exactness.

*Bringing the offence within the statute.*—The offence of forgery, like every other, must, in order to deprive the offender of his clergy, be stated in the words of the act by which that benefit is taken away; but this will not, in itself, make the indictment valid. We have seen that the instrument must not only be called by the term used by the legislature, but set forth that the court may be able to judge whether it properly comes within the denomination ascribed to it. Besides, if the document does not in itself appear to be such an one as the act recognizes, though in effect it amounts to the same, an averment of the fact must be introduced, and it must thus be shewn on the record that the case is within the statute on which it is framed, or it will not suffice to prove it ever so clearly in evidence. Thus, though the mere signing of the name by the holder of a navy bill, and affixed to it on a proper stamp, has always been considered as a receipt at the navy office; it has been holden that in an indictment for forging such a name, it will not suffice to lay the offence as counterfeiting a receipt for the payment of money, but there must be an express averment that the words, letters, or figures, import and signify a receipt. (g) On the other hand, a mere superfluous description, as if the defendant be charged with the forgery of a *bond and writing obligatory*, though the statute mentioning both in the disjunctive, will not vitiate, 2 East, P. C. 985. And an indictment on 2 Geo. II. c. 25. which charged the prisoner with having feloniously altered a bill of exchange\* by falsely making, forging, and adding a cypher 0 to the letter and figure 8/. in the bill, and also falsely making, forging, and adding the letter y to the word *eight*, whereby the letter and figure 8/. in the said bill became 80/. and the word *eight* before written eight in the said bill became *eighty*; by reason and means of which said forgeries and additions the said bill of exchange so drawn as aforesaid, for eight pounds, became and purported to be a bill of exchange for eighty pounds, was held good,

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(g) See the form of an averment of this kind, Cro. C. C. 218, 9. and post.

though the words of the statute are, "if any person shall falsely make, forge, and counterfeit," because the second count charged that certain persons unknown altered the bill, and the defendant feloniously uttered and published it as true knowing it to be forged, which was clearly within the statute 2 East, P. C. 986. But the first count was, at least, informal; and in all indictments for the alteration of a written instrument, where the act does not expressly provide for altering, the offence should be charged as a forgery in the words which the legislature have employed. 2 Stra. 19. And even though the act has the word *alter* as well as *forge*, as 7 Geo. II. c. 22. the offence may be laid as if the whole instrument had been counterfeited, for any alteration of a material part is a forgery of the whole, 2 East, P. C. 979.; but it is more usual, at least in one count, to state the particular alteration charged as criminal.

The indictment must not be in the disjunctive; for if the defendant be charged with having forged *or* caused to be forged the instrument in question, the proceedings will be defective, 1 Salk. 342. 5 Mod. 137. ante 1 vol. 236. But no *technical words* are necessary beyond those used in the statute. At common law, it would suffice to say forged and counterfeited, without adding *falsely*, which the term *forge* sufficiently implies. Nor is it necessary to add the term *unlawfully*, since the offence is manifestly illegal, 2 Rol. Abr. 82.

In the *statement of the names of the parties defrauded* the same rules apply which govern other offences: certainty to a common intent is sufficient: and, therefore, an indictment stating the intention to be to defraud Messrs. Drummond, and Co. is good without naming the partners in the firm. And it is even said that when the forgery is upon "Mr. Drummond, Charing Cross," it would be good to lay the intent to injure him, though several persons must have been intended, 1 Leach, 248. ante 1 vol. 215.

An *intent to defraud*, as we have seen it is essential to the offence, must be laid in the indictment and strictly proved in evidence. So that when the 2 Geo. II. c. 25. and 7 Geo. II. c. 22. made it capital to forge the instruments therein named with intent to defraud any *person or persons*, they did not reach the case of a forgery on any body of men corporate or politic, 1 Leach, 180. This defect was supplied\* as to the first of these acts by 31 Geo. II. c. 22. s. 78. and as to the last, by 18 Geo. III. c. 18. which made forgery on corporations equally penal with the same offence on individuals. But it is not necessary to set forth the particular manner by which the fraud was effected, which is a mere matter of evidence, 1 Leach, 77. 2 Bla. Rep. 787.

[\*1043]

The indictment concludes, against the peace and contrary to the form of the statute; which last is necessary in order to deprive the offender of his clergy, ante 1 vol. 280.

Court in  
which to  
prosecute.

The sessions have no jurisdiction to try forgery, nor can they take cognizance of it as a cheat; though there seems to be no principle on which this exception, and that of perjury at common law, are founded. 1 East, Rep. 173. ante 1 vol. 139, 140.

Evidence.

In all cases of forgery, it is essential to prove that the instrument forged is not the writing of the person in whose name it professes to be made. In general, as we have been the party injured is a competent witness against the prisoner; and many cases there are in which parties are admitted to give evidence who are to derive an immediate advantage from the conviction. The objection affects the credit, but does not take away the competence, 4 East, 581. 577. n. b. 1 Campb. 9. 151. But it seems completely established in case of forgery, that the party whose writing is alleged to be forged cannot be examined to prove that the document is a fiction, if he could be sued on it if genuine, or would derive any advantage from its being proved a forgery, 1 Leach, 8. 2 Leach, 634. 987. 4 East, 582. ante 1 vol. 597. And where the party is manifestly interested in the event, though called, not to prove the hand writing, but the fact of forgery by other means, his testimony will be rejected, 2 East, P. C. 996. But the general rule that a man cannot be admitted to disprove his own apparent signature or writing, does not extend to cases where he has no real interest in the prisoner's conviction. Thus the cashier of the bank of England, and, on the same principle, any other mere agent may be called to prove that the signature to a bank note is not his own; because he is, in fact, a mere indifferent party who has no interest of his own, 1 Leach, 311. So where the bankers of a witness have paid a check forged in his name, and afterwards discovering the fraud, have omitted to debit him with the amount, he may be examined to disprove the signature, 1 Leach, 48. And where a receipt is forged for the purpose of defrauding a creditor who has actually received the money of the debtor, the former may be called as a witness, 12 Mod. 338. So one whose voucher is forged for the purpose of defrauding a person with whom he had no dealings, and to whom he can in no case be responsible, may be called to prove it fictitious. 1 Leach,\* 333. n. d. On the same principle the drawer of a bill is competent to prove that the name of the payee indorsed is a fiction, 1 Leach, 332. and the supposed testator of a will, if living, may be examined to prove it a forgery, 1 Leach, 99. 450. It seems difficult to reconcile with these principles, the decision that the executor of a will bearing date subse-

[\*1044]

quent to that charged as forgery, is not a competent witness on the trial; for it is impossible to conceive how he can have any interest in setting aside a precedent will, when that in which he is named can be the only one available, and will not be affected by the prisoner's conviction or discharge, 1 Leach, 26. On an indictment against the holder of a note for altering the place where it was made payable in order to give it currency, the maker may be examined as to the terms in which it was originally framed, 2 Taunt. 328. And, in all cases, the individual apparently interested may, by a release from the party to whom he seems to be liable, be rendered a competent witness, 1 Leach, 150. 155. 214. And it is said that if a witness be called, a release offered to him, and he refuse to accept it, he may be examined on the trial, Dougl. 139, 140. 3 T. R. 27. [*see further as to the evidence, ante 1 vol. 567, 8.*] The subject of stamping instruments has been considered already. Ante 1036.

The *punishment* of forgery in each particular instance has already been stated: in the far greater number of instances it is capital. And it has been considered so important to enforce these provisions protecting public credit, that there are few instances in which an offender of this kind is the subject of mercy. Where the punishment is not capital, the defendant is holden incapable of being examined as a witness till restored to competence by the king's pardon, Com. Dig. Testmoigne, A. 3, 4. And by 12 Geo. I. c. 29. in case persons convicted of forgery, shall afterwards practice as attornies, solicitors, or law agents, the court where they practice shall examine the matter in a summary way, and order the offender to be transported for seven years.

Punishment.

## INDICTMENTS FOR FORGERY AT COMMON LAW. MISDEMEANOUR.

That L. Y. late of, &c. falsely, (*h*) unlawfully and wickedly devising, contriving and intending, one A. K. late of the same parish and\* county, yeoman, unjustly, maliciously and injuriously to aggrieve, oppress and impoverish, on, &c. with force and arms at, &c. aforesaid, of his wicked mind, invention and imagination, unlawfully, knowingly, subtly and falsely, did forge and counterfeit a certain writing en-

At common law for forging a writ of fieri facias, and thereby taking a person's goods in execution.

(*i*) [*\*1045*] First count for forging and publishing, &c.

(*h*) The term *falsely* is not requisite, for it is implied in the word forge. 2 East, P. C. 985.

(*i*) See similar precedents, Cro. C. C. 208. Starkie, 507. An indict-

ment for forging the assignment of a lease at common law, 2 Ld. Raym. 920.—information for forging an order, 2 Ld. Raym. 1461.—for forging the name of the clerk to com-

Second  
count for  
publishing  
&c.

[\*1046]

Informa-  
tion for a  
misde-  
meanour

grossed on parchment in form and to the likeness and similitude of a writ of our lord the king, of fieri facias, to the tenor following, that is to say, George, &c. [*here set out the forged writ with accuracy.*] And the jurors, &c. do further present, that the said L. Y. of his wicked mind, invention and imagination, afterwards, to wit, on, &c. at, &c. aforesaid, the said false, forged and counterfeit writing, falsely forged, purporting to be a writ of fieri facias, subtly, falsely, knowingly and deceitfully, did pronounce (*k*) and publish, and then and there, to wit, on the same, &c. at, &c. aforesaid, subtly, falsely, knowingly and deceitfully, as a true writ of our said lord the king, of fieri facias, did cause to be delivered to the then sheriff of Salop, for execution to be made thereof, and afterwards, to wit, on, &c. at, &c. aforesaid, did cause to be seized and taken, divers goods and chattels of the said A. K. by pretence of that writ, to the great damage and oppression of the said A. K. to the evil example, &c. and against the peace, &c. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said L. Y. on, &c. with force and arms, at, &c. aforesaid, of his wicked mind, intention and imagination, a certain false, forged and counterfeit writing, engrossed on parchment, falsely forged in form and to the likeness and similitude of a writ of our said lord the king, of fieri facias, issuing out of the said court of our said lord the king, of common pleas, unlawfully, subtly, knowingly and deceitfully did pronounce and publish as a true writ of our said lord the king, whose tenor follows, that is to say, [*set out the writ.*] he the said L. Y. then and there, to wit, on the same, &c. at, &c. aforesaid, well knowing the same to be falsely forged and counterfeited, and the same then and there, to wit, on the same, &c. at, &c. aforesaid, unlawfully, subtly, knowingly and deceitfully, did cause to be delivered to the then sheriff of Salop for execution, to be made thereof, and afterwards, to wit, on the same, &c. at, &c. aforesaid, did\* cause to be seized and taken divers goods and chattels of the said A. K. by virtue of that writ, (*l*) to the great damage and oppression of the said A. K. to the evil example, &c. and against the peace, &c.

[Commencement of information as ante 6.] That J. W. late of, &c. being obliged to deliver three hundred and fifteen tons and one quarter of a ton of allum of the value of five

missioners of the property tax, 1 East Rep. 173—for forging a writ of latitat, Trem. P. C. 127.—for forging a writ of fieri facias, Trem. P. C. 128. As to forgery at common law, see general note as to the law ante 1022 to 1044. and as to form of in-

dictment ante 1039

(*k*) This word is in the precedents, but it seems absurd. The word "*publish*" would suffice.

(*l*) Quere if not better to say "under colour of."



thousand pounds to the most noble E. duke of the county of B. and of N. at a certain day now past, he the said J. W. wickedly contriving and intending to deceive and defraud the said duke of the aforesaid allum, and with an iniquitous and fraudulent intention to avoid the delivery of the same allum to the said duke, on, &c. at, &c. with force and arms, upon the back side of a certain certificate in writing, signed with the hand of one A. N., did falsely forge and counterfeit, and cause to be falsely forged and counterfeited, a certain writing in the words and figures following, that is to say, Schedule, 660 tons, 5 cwt.—315 tons, 5 cwt.—total 975 tons 10 cwt. Mr. John Ward, I do hereby order you to charge the quantity of six hundred and sixty tons and one quarter of allum to my account, part of the quantity mentioned in this certificate, and out of the money arising by the sale of allum in your hand pay to Mr. W., and yourself ten pounds for every ton, according to agreement, and for so doing this shall be your discharge, Buckingham, April 30th, 1706, to the evil example, &c. to the great damage of the said duke, and against the peace of our said lord the king, his crown and dignity. And the said attorney general further gives the court here to understand, and be informed, that the aforesaid J. W. being obliged to deliver three hundred and fifteen tons, and one quarter of a ton of allum, of the value of five thousand pounds, to the aforesaid duke, at a certain day now passed, he the said J. W. wickedly contriving and intending to deceive and defraud the said duke of the aforesaid allum, and with an iniquitous and fraudulent intention, to avoid the delivery of the same allum to the said duke, afterwards, to wit, on the said, &c. at, &c. aforesaid, with force and arms, a certain writing, falsely forged and counterfeited on the backside of a certain certificate in writing, signed with the hand of one Ambrose Newton, did wickedly, unlawfully and fraudulently publish, and cause to be published, which said writing so falsely forged and published, is in the words and figures following, that is to say, [*here set out the\* paper writing as before.*] he the said J. W. then and there well knowing the said writing by him the said J. W. so published as aforesaid, to be false, forged and counterfeited, to the evil and pernicious example, &c. to the great damage of the said duke, and against the peace of our said lord the king, his crown and dignity.

at common law for forging an indorsement on a certificate in the name of the Duke of Buckingham, concerning a quantity of allum, charged to the Duke's account, &c. (m) First count, for forging.

Second count.

[\*1047]

That, on, &c. at, &c. A. B. esquire, then being sheriff of the said county of S. by virtue of his said majesty's writ, to him

Against a bailiff for adding his own name to a warrant directed to

(m) From 2 Ld. Raym. 1461. where see the whole proceedings, and see ante 994. &c. as to the false pretences. And the same precedent

is translated in Cro. C. C. 227. As to the law see general note ante 1022 to 1044. And as to form of indictment ante 1039.

another  
bailiff only  
and arrest-  
ing and  
imprison-  
ing the  
prosecu-  
tor, &c.  
(n)

the said sheriff for that purpose directed, duly made his the said sheriff's warrant in writing under his hand and seal, directed solely to one J. H. his the said sheriff's bailiff; by which said warrant he the said sheriff commanded the said J. H., that of the goods and chattels, &c. [*here recite the warrant.*] And the jurors, &c. do further present, that J. A. late of, &c. wickedly, unlawfully and maliciously, devising, contriving and intending, as much as in him lay, to oppress, injure and impoverish the said W. H. in the said warrant named, having the said warrant in the custody and possession of him the said J. A., he the said J. A. unlawfully, knowingly, deceitfully and falsely, after the making and issuing of the said warrant, to wit, on the said, &c. at, &c. aforesaid, did alter, and cause and procure to be altered, the said warrant, by then and there unlawfully, knowingly, deceitfully and falsely, inserting and forging the name of him the said J. A. in the direction of the said warrant of the said sheriff, and by then and there unlawfully, knowingly, deceitfully and falsely adding and subjoining the letter s, to the word bailiff in the direction of the said warrant, so as to make the said warrant purport to be a warrant directed to the said J. H. and J. A. for execution thereof, and with an intent greatly to injure, aggrieve and oppress, the said W. H., and which said warrant so unlawfully, knowingly, deceitfully and falsely altered, is as follows, that is to say, [*here set out a fac simile of the warrant in its altered state.*] And the jurors, &c. do further present, that the said J. A. afterwards, to wit, &c. at, &c. aforesaid, the said warrant so altered as aforesaid, did, unlawfully, subtly, knowingly, falsely and deceitfully, utter and publish as the true and real warrant of the said sheriff, with an intent greatly to oppress, aggrieve and injure the said W. H., and also under colour and pretence of which said warrant so altered as aforesaid, he the said J. A. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, did wrongfully, unjustly and injuriously, against the will of the said W. H., and contrary to the laws of this realm, take, arrest and imprison the said W. H. by his body, and kept and detained him so imprisoned there\* for a long space of time, to wit, for the space of twenty-four hours, then next ensuing, against the will of him the said W. H. and contrary to the laws of this realm, whereby the said W. H. during all that time not only underwent and suffered great pain, torture and anguish of body and mind, but was also prevented and hindered from following and transacting his lawful affairs and business; and the said W. H. was also

[\*1048]

(n) See a similar precedent, Cro. C. C. 229. As to the law see general note, ante 1022 to 1044. and as to the form of indictment ante 1039.

put to sundry great charges and expences, amounting in the whole to a large sum of money, to wit, the sum of five pounds in and about the procuring and obtaining his release and discharge from his said imprisonment; and other wrongs to the said W. H. then and there did, to the great damage of the said W. H., and against the peace, &c. And the jurors, &c. [*here add a count for a common assault.*]

## INDICTMENTS FOR FORGERY ON STATUTES, BANK NOTES, AND SECURITIES OF PUBLIC COMPANIES.

That J. B. late of, &c. heretofore, that is to say, on, &c. with force and arms, at, &c. feloniously did forge and counterfeit (*p*) a certain bank note, (*q*) the tenor (*r*) of which said forged and counterfeited bank note, is as followeth, that is to say, [*the note is to be set out in each count precisely in its usual form.*] (*s*) with intent to defraud the governor and company of the bank of England, (*t*) against\* the form of the statute, &c. (*u*) and against the peace, &c. And the jurors aforesaid, on their oath aforesaid, do further present, that the said J. B. heretofore, that is to say, on, &c. with force and arms, at, &c. did feloniously dispose of, and put away a certain forged and counterfeited bank note, the tenor of which said last mentioned forged and counterfeited bank note is as followeth, that is to say, [*set out the note as in first count,*] with intent to defraud the governor and company of the bank of England; he the said J. B. at

For forging a bank of England note, uttering the same, laying it in several ways. (*o*) First count on 15 Geo. II. c. 13. s. 2. or 45 Geo. III. c. 89. s. 11. for forging a bank note. [\*1049] Second count on

(*o*) This precedent is said to have been approved of by the ablest lawyers of the day, and in use for almost half a century. See indictments for forging, uttering and disposing of bank notes, 2 Leach, 978, 983. 1019. 1 New Rep. 96. 92. 2 Taunt 334. A precedent for forging a defective bank note, 1 Leach, 175. For uttering a forged bank note, Dougl. 201. For erasing an indorsement with lemon juice, 3 P. Wms. 419. As to the *Offence*, &c. see ante 1022 to 1044. and the statutes referred to in the margin. And as to the form of indictment ante 1039.

(*p*) The words of the act. The term *falsely* is not necessary ante 1042.

(*q*) The instrument may be thus expressed; but it seems more cor-

rect, in propriety of speech, to say, "a certain paper writing purporting to be a bank note," as the charge supposes it to be a fiction, 2 Bla. Rep. 790 ante 1040, 1.

(*r*) This word imports an exact copy, 2 Leach 660. The terms "in the words and figures following that is to say," and "as follows" may be used at pleasure as the import is the same, 2 Bla. Rep. 787.

(*s*) As to the accuracy with which the instrument must be set forth, see ante 1040.

(*t*) There is no occasion to state the means of fraud, 1 Leach, 77. As to the statement of the parties defrauded see ante 1042.

(*u*) This conclusion is requisite to oust the defendant of clergy.

the same acts for disposing and putting away.

(w)

Third count for forging it as a promissory note on 45 Geo. III. c. 89.

with intent to defraud the bank.

Fourth count on 45 Geo. III. c. 89. for disposing and putting away a promissory note with like intent.

Fifth count like the last, laying intent to defraud an individual.

Sixth count like the second with the same variation.

[\*1050]

Seventh count like the third, with the same variation.

the said time of his so disposing of and putting away the said last mentioned forged and counterfeit bank note, then and there, to wit, on, &c. at, &c. well knowing such last mentioned note to be forged and counterfeited, against the form of the statute, &c. and against the peace, &c. [*third count same as the second to the words,*] feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting a certain promissory note for the payment of money, the tenor of which said last mentioned false, forged and counterfeit note, is as followeth, that is to say, [*set out the note as in first count,*] with intent to defraud the governor and company of the bank of England, against the form, &c. and against the peace, &c. [*Fourth count same as the second to the words,*] feloniously did dispose of and put away a certain false, forged and counterfeited promissory note for the payment of money, the tenor of which said last mentioned false, forged and counterfeited note is as followeth, that is to say, [*set out note as in first count,*] with intent to defraud the governor and company of the bank of England, he the said J. B. at the said time of his so disposing of and putting away the said last mentioned false, forged and counterfeited note, then and there, to wit, on, &c. at, &c. well knowing the same last mentioned note to be false, forged and counterfeited, against the form, &c. and against the peace, &c. [*Fifth count,*] feloniously did forge and counterfeit a certain other bank note, the tenor of which said last mentioned forged and counterfeit bank note is as followeth, that is to say, [*set out note as in first count,*] with intent to defraud one J. S. against the form, &c. and against the peace, &c. [*Sixth count.*] Feloniously did dispose of and put away a certain other forged and counterfeited bank note, the tenor of which said last mentioned forged and counterfeited bank\* note is as followeth, that is to say, [*set out note as before,*] with intent to defraud the said J. S., he the said J. B. at the time of his so disposing of and putting away the said last mentioned forged and counterfeited bank note, then and there, to wit, on, &c. well knowing such last mentioned note to be forged and counterfeited, against the form, &c. and against the peace, &c. [*Seventh count.*] Feloniously, did falsely make, forge and counterfeit, and cause and pro-

(w) If one person deliver a forged note to another in order that he may utter it, this is a sufficient "disposing of and putting away" within the statute 1 N. R. 96. In order to prove the defendant's knowledge of the forgery, the prosecutor may

give in evidence his having uttered other forged notes, though each uttering is a distinct offence, 1 N. R. 92. The indictment need not shew to whom the notes are put away, 2 Taunt. 334.

cure to be falsely made, forged and counterfeited and willingly act and assist in the false making, forging and counterfeiting a certain other promissory note for the payment of money, the tenor of which said last mentioned forged and counterfeited note is as followeth, that is to say, [*set out note as before,*] with intention to defraud the said J. S. against the form, &c. and against the peace, &c. [*Eighth count.*] Feloniously did dispose of and put away a certain other false, forged and counterfeited promissory note for payment of money, the tenor of which said last mentioned false, forged and counterfeited note is as followeth, that is to say, [*set out note as before,*] with intention to defraud the said J. S., the said J. B. at the said time of his so disposing of and putting away the said last mentioned false, forged and counterfeited note, then and there, to wit, on, &c. well knowing the same last mentioned note to be false, forged and counterfeited, against the form, &c. and against the peace.

Eighth count like the fourth with the same variation.

That A. B. late of, &c. on, &c. at, &c. feloniously, knowingly and wittingly, and without lawful excuse, had in his possession and custody, divers forged and counterfeited bank notes, that is to say, one forged and counterfeited bank note, the tenor of which said forged and counterfeited bank note is as follows, that is to say, [*here set out the note as directed, ante 1040,*] and one other forged and counterfeited bank note, the tenor of which said last mentioned forged and counterfeited bank note is as followeth, that is to say, [*here set out the other note,*] he the said A. B. then and there, to wit, on, &c. at, &c. aforesaid, well knowing the same notes to be forged and counterfeited, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present. that the said A. B. on, &c. aforesaid, at, &c. aforesaid, feloniously, knowingly, wittingly and without lawful excuse, had in his possession and custody, a certain other forged and counterfeit bank note, the tenor of which said last mentioned forged and counterfeited bank note is as followeth, that is to say, [*the first note in the preceding count was here again set out,*] he the said A. B. then and there to wit, on, &c. at, &c. aforesaid, well knowing the same last mentioned\* note to be forged and counterfeited, against the form of the statute, &c. and against the peace, &c.

For a single felony on 45 Geo. III. c. 89. s. 6. for having forged bank of England notes in possession without lawful excuse, knowing the same to be forged. (x)

[\*1051]

That J. G. late of, &c. on, &c. having in his possession a certain bank note in the words, letters and figures following, that is to say, [*here set out the original bank note for fifteen pounds, verbatim.*] he the said J. G. then and there, that to is

For altering a bank of England note by chang-

(x) As to the offence, &c. see indictment, ante 1039. ante 1022 to 1044. and as to form of

ing *fifteen*  
into *fifty*,  
and utter-  
ing it  
when al-  
tered. (y)

say, on, &c. aforesaid, with force and arms, at, &c. aforesaid, feloniously did alter the said bank note, by then and there falsely obliterating and defacing the letters *een*, before printed in the word *fifteen* in the said bank note, and also the letters *een* before printed in the word *fifteen* in white letters on a black ground underneath the said bank note, and by then and there falsely making, forging and counterfeiting upon the said bank note, in the place of the first mentioned letters *een*, before printed in the said word *fifteen* in the said bank note, the letter *y*, and also by then and there falsely making, forging and counterfeiting upon the said bank note in the place of the said letters *een* before printed in the said word *fifteen* in white letters on a black ground underneath the said bank note another letter *y*, by reason and means of which said obliterating and defacing of the said letters *een* before printed in the said word *fifteen*, in the said bank note, and also the letters *een* being before printed in the said word *fifteen*, in white letters on a black ground underneath the said bank note, and of falsely making forging and counterfeit upon the place of the said letters *een*, before printed in the said word *fifteen*, in the said bank note the letter *y*; the letters *fist* so remaining of the said word *fifteen*, before printed in the said bank note, with the said first mentioned letter *y*, so falsely made, forged and counterfeited as aforesaid, did become, import and signify *fifty*, and the letters *fist* so remaining of the said word *fifteen* before printed in white letters on a black ground underneath the said last mentioned bank note, with the said other letter *y*, so falsely made, forged and counterfeited, as aforesaid, did become, import and signify *fifty*, which said altered bank note is in the words, letters and figures following, that is to say, [*here insert a correct copy of the note as altered, and purporting to be a fifty pound bank note*] with intent to defraud the governor and company of the bank of England, and against\* the form of the statute, &c. [*Second count like the first only laying the intent to be to defraud the parties to whom the note was paid.*] And the jurors, &c. do further present, that the said J. G. afterwards, that is to say, on the said, &c. having in his custody and possession a certain altered bank note, marked No.

[\*1052]

Third  
count for  
feloniously  
and know-  
ingly dispos-  
ing of and  
putting  
away an  
altered  
bank note  
as a true  
one, to de-  
fraud the  
bank.

(y) See a similar precedent, 4 Wentw. 25. Starkie, 495. The 11 Geo. III. c. 9. s. c. made the altering and erasing a bank note or uttering it felony. The 15 Geo. II. c. 13. s. 11 took away clergy and made it capital. And the 45 Geo. III. c. 89, s. 2. includes both forging and altering in the same provision; this

however, is immaterial, since it is settled that any important alteration in a genuine instrument is a forgery of the whole, and may be laid as such in the proceedings, though it is made a substantive offence 2 East P. C. 979. As to the law see general note, ante 1022 to 1044. and as to form of indictment, ante 1039.



K. 87, with the name of J. B. thereunto subscribed, purporting to bear date at London, the twenty-ninth of January, 1782, and to have been signed by J. B. for the governor and company of the bank of England, for the payment of the sum of fifty pounds, to A. Cowper or bearer on demand, which said last mentioned altered bank note, is in the words, letters and figures following, that is to say, [*here insert the bank note as altered.*] he the said J. G. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, feloniously did dispose of and put away the said last mentioned bank note, as and for a true and good bank note, he the said J. G. at the said time of disposing and putting away of the said last mentioned altered bank note then and there well knowing the same bank note to be altered, with intent to defraud the governor and company of the bank of England, against the form, &c. and against the peace, &c. [*Fourth count like the third, only stating the note to have been altered with intent to defraud C. B. and C. A. instead of the bank. Fifth count for forging the note with intent to defraud the bank as ante 1048, 9. Sixth count for forging the note with intent to defraud the parties to whom it was uttered. Seventh count for uttering the forged note with intent to defraud the bank. Eighth count for uttering a forged note with intent to defraud the parties to whom it was uttered.*]

4th, 5th,  
6th, 7th  
and 8th  
counts.

That one W. H., by the name and description of W. H. of York Street, Southwark, gentleman, on, &c. was possessed of and entitled unto a certain interest and share, to wit, fifty pounds interest and share of, and in certain annuities transferable at the bank of England, and established by certain acts of parliament, that is to say, [*here the titles of the acts (a) were set out, but this seems unnecessary.*]\* And the jurors, &c. do further present, that J. H. G. late of, &c. well knowing the premises, but being a person of a wicked mind and disposition, and unlawfully devising and intending to defraud and deceive the governor and company of the bank of England, heretofore, and whilst the said W. H. was as aforesaid so possessed and entitled unto the said interest and share of and in the said annuities, so as aforesaid transfera-

On 33  
Geo. III..  
c. 30. s. 2.  
for forg-  
ing a  
transfer  
of stock.  
(z)  
[\*1053]

(z) This was the indictment against Gade, on which he was convicted. In this case it was decided that a party may be convicted of forging a transfer of stock though the transfer was never witnessed nor had the stock ever been accepted 2 Leach, 732. as to law, see general note ante 1022. to 1044. and form of indictment ante 1039.

(a) Here the following acts were

recited: 25 Geo. II. c. 27. 28 Geo. II. c. 15. 29 Geo. II. c. 7. 31 Geo. II. c. 22. 32 Geo. II. c. 22. 33 Geo. II. c. 12. 1 Geo. III. c. 7. 6 Geo. III. c. 15. 7 Geo. III. c. 24. 8 Geo. III. c. 18. 10 Geo. III. c. 34. 16 Geo. III. c. 18 Geo. III. c. 22. 19 Geo. III. c. 18. 22 Geo. III. c. 8. 23 Geo. III. c. 35. 24 Geo. III. c. 10. 33 Geo. III. c. 28. 34 Geo. III. c. 1. and 35 Geo. II. c. 14.

ble at the bank of England, to wit, on the said, &c. with force and arms, at, &c. aforesaid, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the falsely making, forging and counterfeiting a transfer of the said 50*l.* interest and share of and in the said annuities, so as aforesaid transferable at the bank of England, with the name W. H. thereunto subscribed, purporting to have been signed by the said W. H. and to be a transfer of the said 50*l.* interest, and share of and in the said annuities, so as aforesaid transferable at the bank of England, from the said W. H. unto one W. W. of the Stock Exchange, gentleman, his executors, administrators or assigns, (b) the tenor of which said false, forged and counterfeited transfer is as followeth, that is to say, [*here set fourth the transfer verbatim.*] with intent to defraud the governor and company of the bank of England, against the form of the statute, &c. and against the peace, &c. [*Second count for feloniously uttering and publishing as true the said transfer. Third count like the first laying the intent to defraud W. H. Fourth count like the second laying the intent to defraud W. H. Fifth count like the first with intent to defraud W. W. Sixth count like the second with intent to defraud W. W. Six other counts the same mutatis mutandis only charging that W. H. was possessed of, and entitled unto, a certain interest and share, to wit, fifty pounds interest and share of and in certain annuities transferable at the bank of England, commonly called consolidated three per centum annuities, &c. And six other counts, charging generally without mentioning to whom the stock belonged, and without reciting the statutes,*] "That J. H. G. feloniously did falsely make for and counterfeit a certain transfer, to wit, a transfer of an interest and share, that is to say, fifty pounds interest and share of and in certain annuities transferable at the bank of England, commonly called consolidated three per cent. annuities," and that he did utter and publish the same, &c. laying the intent as before.

[\*1054]  
Against a clerk of the South Sea company for altering a warrant of such company for payment of an annuity, by a letter

That one D. H. on, &c. and long before was, and still is one of the clerks of the governor and company of merchants of Great Britain, trading to the South Seas and other parts of America,\* and for encouraging the fishery; and then and long before was, and hath ever since been entrusted and employed by the governor and company aforesaid, to make out and sign warrants or orders for the payment of money, payable by the said governor and company, to wit, at London, that is to say, at the parish of Saint Mary Outwich, in the ward of Broad street, in London aforesaid. And the jurors,

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(b) The purport is better omitted, see ante 1040.

&c. do further present, that H. P. late of, &c. on, &c. and long before and afterwards, was a clerk of the governor and company aforesaid, commonly called a pay-clerk, and entrusted and employed by the said governor and company to pay money for them, and on their behalf, upon and in discharge of warrants or orders for the payment of money, payable by the said governor and company, to wit, at, &c. aforesaid. And the jurors, &c. do further present, that the said H. P. on the said, &c. having in his custody and possession a certain warrant for the payment of money, partly printed and partly written, signed by and under the hand of the said D. H. and directed to R. R. esquire, then and upon the said, &c. and long before being cashier to the governor and company aforesaid, for the payment of the sum of eight pounds to one W. D. therein named, for half a year's annuity on the sum of four hundred pounds interest, or share in the new joint stock of South Sea annuities therein mentioned, and which said warrant was then in the words, figures, cyphers and letters following, that is to say, [*here set out the warrant in its original state,*] and on the back of which said warrant or order the said W. D. had signed his name as followeth, W. D., he the said H. P. afterwards, that is to say, on the said, &c. with force and arms, at, &c. aforesaid, the said warrant or order feloniously did alter, and cause to be altered, by then and there feloniously and falsely making, forging and adding the letter *y* to the word eight, before written in the said warrant or order, whereby the words *eight* pounds, before written in the said warrant or order, with the said letter *y*, so falsely made and forged and added as aforesaid, became eighty pounds, and also by then and there feloniously and falsely making, forging and adding the cypher 0 to the figure and cyphers 400, before also written in the said warrant, or order, which figures and cyphers, with the letter £. next preceding them, did, before such last mentioned forgery and addition, import and signify four hundred pounds; but by reason and means of such last mentioned forgery and addition, did,\* together with the said cypher so falsely made, forged and added as aforesaid, become, import and signify, four thousand pounds; and also by then and there feloniously and falsely making, forging and adding the cypher 0, to the figure 8, before written also in the said warrant or order, and which said last mentioned figure, with the letter £. preceding it, did, before such last mentioned forgery and addition, import and signify *eight* pounds, but by reason and means of such last

and cyphers which increased the sum.  
(h)

[\*1055]

(c) See a similar precedent, Cro. C. C. 7th Ed. 401. 8th Ed. 218. and see observations on this precedent, 2 Leach, 631, 2, as to the law, see general note, ante 1021 to 1044. and as to form of indictment, ante 1039.

Second  
count for  
uttering  
and pub-  
lishing  
with a like  
intention.

mentioned forgery and addition, did, together with the said last mentioned cypher, so falsely forged and added, become, import and signify eighty pounds, and which said warrant or order, so feloniously and falsely altered, and caused to be altered, is as follows, that is to say, [*here set out the warrant in its altered state,*] with intention to defraud the governor and company aforesaid, of the sum of seventy-two pounds, of lawful money of Great Britain, (d) against the peace, &c. and also against the form of the statute, &c. And the jurors, &c. do further present, that the said H. P., on the said, &c. having in his custody and possession a certain false, forged, altered and counterfeited warrant for the payment of money, partly written and partly printed, purporting to be a warrant or order, under the hand of the said D. H. and directed to the said R. R. esquire, for the payment of the sum of eighty pounds to one W. D. therein named, for half a year's annuity on the sum of four thousand pounds interest or share in the new joint stock of South Sea annuities therein mentioned, which said false, forged, altered and counterfeit warrant, is in the words, figures, cyphers and letters following, that is to say, [*here set forth the warrant in its altered state, at length,*] and on the bank of which said false, forged, altered and counterfeited warrant or order is signed the name W. D., as a discharge under the hand of the said W. D. in the said false, forged, altered and counterfeited warrant, named of the said false, forged, altered and counterfeited warrant or order, he the said H. P. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, with intention to defraud the governor and company of merchants of Great Britain trading to the South Seas, and other parts of America, and for encouraging the fishery, of another sum of seventy-two pounds, the said false, forged, altered and counterfeited warrant or order, did feloniously utter and publish as a true warrant, under the hand of the said D. H. for the payment of the sum of eighty pounds to the said W. D. he the said W. P. at the time he so as aforesaid uttered and published the said false, forged, altered and counterfeited warrant or order, well knowing the same to be false, forged, altered and counterfeited, against the peace, &c. and against the form of the statute, &c. [*See other counts, Cro. C. C. 7th Ed. 405.*]

Indict-  
ment for  
forging  
the hand  
writing of  
the clerk  
of the re-

That J. G. late of, &c. after the first day of May, in the year of our lord one thousand seven hundred and twenty-six, to wit, on, &c. at, &c. aforesaid, feloniously did forge and counterfeit, and feloniously did procure to be forged and counterfeited, and feloniously did wilfully act and assist in

(d) These words are omitted in 8th Ed. Cro. C. C.

the forging and counterfeiting, a certain writing, in the form of a writing made by R. H. esq. then and long before, and still being clerk of the report office, of the high court of chancery of our said lord the king, situate at the parish of St. Andrew Holborn, aforesaid, in the county aforesaid, purporting to be an office copy of the report of T. A. esq. then and long before, and still being the accountant general of the said high court of chancery, of the sum of &c. paid into the bank of England, by W. H. gentleman, pursuant to an order of the said high court of chancery, and also an office copy of a certificate of B. S. then and before, and yet being one of the cashiers of the governor and company of the bank of England, for the payment of the said sum, &c. into the bank of England, which said forged and counterfeit writing contained and still doth contain therein as followeth, that is to say, *[set out a copy of the documents.]* with intention to defraud the said W. H. to the evil example, &c. and against peace, &c. and against the form of the statute, &c. And the jurors, &c. do further present, that the said J. G. after, &c. on, &c. with force and arms, at, &c. aforesaid, a certain other forged and counterfeit writing, in form of a writing, made by R. Ranisford, esq. then and long before and still being clerk of the report office of the high court of chancery of our said lord the king, at, &c. aforesaid, purporting to be an office copy of a report of T. A. esq. then and long before, and still being the accountant general of the said high court of chancery, of the sum of, &c. being paid into the bank of England, by the said W. H. pursuant to an order of the high court of chancery. And also an office copy of a certificate of B. S. then and long before, and yet being one of the cashiers of the governor and company of the bank of England, of the payment of the said sum of 437*l.* 13*s.* 7*d.* into the bank of England, feloniously did utter and publish as a true writing, which said last mentioned false, forged and counterfeit writing, contained and doth contain therein as followeth, that is to say *[here set out the documents again]* with intention to defraud the said D. H. he the said J. G. at the time when he so altered and published the said last mentioned writing, then and there well knowing the\* said last mentioned writing to have been, and then to be forged and counterfeited, to the evil example, &c. and against the peace, &c. and against the form of the statute, &c. And the jurors, &c. do further present, that the said J. G. after, &c. to wit, on, &c. with force and arms, at, &c. aforesaid, feloniously did forge and counterfeit, and fe-

port office in chancery to an office copy of the report of the accountant general of certain monies, &c. paid into the bank of England, and an office copy of the certificate of one of the cashiers of the bank, on 12 Geo. II. c. 32. s. 9. (e) First count for forging. Second count for uttering and publishing such forged copy.

[\*1057]

Third count for forging an office

(e) As to the law in general, see dictment, ante 1039. From the MS. ante 1022 to 1044. and form of indictment of a gentleman at the bar.

copy of a certificate of the accountant general, and a receipt of the cashier of the bank.

loniously did procure to be forged and counterfeited, and feloniously did wilfully act and assist in the forging and counterfeiting a certain other writing, in form of a writing made by R. R. esq. then and long before and still being clerk of the report office of the high court of chancery of our said lord the king, to wit, at the parish of, &c. aforesaid, purporting to be an office copy of a certificate, of T. A. esq. then and long before, and still being the accountant general of the said high court of chancery, of the sum, of, &c. being paid into the bank of England, by the said W. H. pursuant to an order of the high court of chancery, and also an office copy of a receipt of B. S. then and before, and yet being one of the cashiers of the governor and company of the bank of England, for the payment of the said sum, of, &c. into the bank of England, which said last mentioned forged and counterfeited writing, contained and still doth contain as followeth: i. e. to wit, [*here set out the paper.*] with intention to defraud the said W. H. to the evil example, &c. against the peace, &c. and against the form of the statute, &c. Fourth count, for publishing a forged office copy of the certificate and receipt. Fifth and and sixth counts for forging and publishing the office copy of a certificate, stating it to be a writing, in the form of a writing made by the clerk of the report office of the court of chancery.

## INDICTMENTS FOR FORGERY ON STATUTES. STAMPS.

[\*1057]

On 32  
Geo. III.  
c. 113. s.  
7. for  
forging  
and utter-  
ing  
stamps.  
(f)  
First  
count for  
forging  
and  
making a  
mark for  
denoting a  
duty of  
2l.

That J. B. late of, &c. gentleman, on, &c. with force and arms, at,\* &c. feloniously did forge and counterfeit, and feloniously did cause and procure to be forged and counterfeited, a certain mark, used in pursuance of a certain act of parliament made and passed in the 48th year of the reign of his present majesty, intituled, &c. [*state title*] by and under the directions of the commissioners appointed to manage the duties on stamped vellum, parchment and paper, for express-

(f) This was the indictment against Blackburn, of Leeds A. D. 1815. on which he was convicted. See an indictment for uttering 1,000 counterfeit receipt stamps, on 28 Geo. III. c. 49. 1 Leach, 352. where it was holden, that all paper on the face of which there was a mark resembling the stamp required by that act, shall be considered as a "paper liable to the duties" imposed there-

in, within its meaning. See also outline of indictment on 49 Geo. III. c. 8. for having counterfeited stamps in possession, 3 Campb, 78 and of an indictment on 12 Geo. III. c. 48. for transposing stamps, 2 Leach 384. and the indictment against Wainwright for transposing stamps, ante 141. As to law see general note ante 1022 to 1044. and form of indictment ante 1039.



ing and denoting a certain duty, then and there under the care and management of the said commissioners, that is to say, a certain duty of 2*l.*, granted by the said last mentioned act, that is to say, upon any mortgage of, or affecting any lands, estate or property real, or property heritable, or moveable, whatsoever, where the same should be made as a security for the payment of any definite and certain sum of money, advanced or lent at the time or previously due and owing, or forborne to be paid, being payable, exceeding one hundred and fifty pounds, and not exceeding three hundred pounds, with intent to defraud his said majesty of the said duty, contrary to the form of the statute, &c. and against the peace, &c.

Second count. That the said A. B. on, &c. aforesaid, with force and arms, at, &c. aforesaid, *feloniously did forge and counterfeit*, and feloniously did cause and procure to be forged and counterfeited, *a certain mark*, in pursuance of the said act made and passed in the forty-eighth year aforesaid, used by and under the directions of the commissioners appointed to manage the duties on stamped vellum, parchment and paper, for expressing and denoting a certain duty, that is to say, a certain duty of two pound, granted by the same act, and then and there, under the care and management of the said commissioners, with intent to defraud, &c. [*conclude as in first count.*]

Second count for forging a mark denoting a duty.

[Same as second count to the words "a certain mark," then proceed.] A certain stamp in pursuance\* of the said act, made and passed in the forty eighth year aforesaid, used by and under the directions of the commissioners appointed to manage the duties on stamped vellum, parchment and paper for expressing and denoting a certain duty, then and there, under the care and management of the said commissioners, that is to say, a certain duty of two pounds, granted by the said last mentioned act, upon such mortgage as aforesaid, with intent, &c. [*as in the first count.*]

Third count for forging a stamp.

Fourth count same as second, substituting the word "stamp" for "mark."

Fourth count.

[Same as second to the words, "a certain mark," then proceed.] Upon a certain paper, the resemblance of the impression of a certain mark, in pursuance, &c. [*proceed as in third count from the asterisk.\**]

Fifth count.

Exactly\* the same as second count, except that instead of the words "a certain mark," the following were used, "upon paper the resemblance of the impression of a certain mark."

[\*1059]

Sixth count.

That the said A. B. on, &c. with force and arms, at, &c. feloniously did stamp and mark, and feloniously did cause and procure to be stamped and marked, a certain paper, with a certain forged and counterfeited mark and stamp, in pursuance, &c. [*conclude as in the third count from the asterisk.*]

Seventh count.

Eighth  
count.

The eighth count was like the last, to the words "in pursuance, &c." and from those words was like the second count.

Ninth  
count.

That the said J. B. on, &c. with force and arms, at, &c. feloniously did utter a certain parchment, having thereupon the impression of a forged and counterfeited mark, in pursuance of the said act, made and passed in the forty-eighth year aforesaid, used by and under the direction of the commissioners appointed to manage the duties on stamped vellum, parchment and paper,\* for expressing and denoting a certain duty, then and there, under the care and management of the said commissioners, that is to say, a certain duty of two pounds, granted by the said last mentioned act upon such mortgage, as aforesaid, with intent to defraud his said majesty of the said last mentioned duty, he the said J. B. then and there, (to wit) at the time when he uttered the said last mentioned parchment as aforesaid, to wit, at, &c. aforesaid, knowing the said last mentioned mark to be forged and counterfeited, contrary to the form of the statute in that case made and provided, and against the peace of our lord the king, his crown and dignity.

Tenth  
count.

[*Same as the ninth to the asterisk, and then proceed as follows.*] For expressing and denoting a certain duty, that is to say, a duty of two pounds, then and there, under the care and management of the said commissioners, with intent to defraud his said majesty of the said last mentioned duty, he the said J. B. then and there, to wit, at the time when he so uttered the said last mentioned parchment as aforesaid, at, &c. aforesaid, knowing the said last mentioned mark to be forged and counterfeited, contrary to the form of the statute, &c. and against the peace, &c.

Eleventh  
and  
twelfth  
counts.  
Thir-  
teenth  
count.

The Eleventh and Twelfth counts were like the Ninth and Tenth, except that the word "*paper*" was used instead of parchment.

That the said J. B. on, &c. with force and arms, at, &c. feloniously did utter a certain other parchment, having thereupon the forged and counterfeited impression of a certain mark, in pursuance, &c. [*this count same as Ninth from the word "pursuance."*]

[\*1060]

Four-  
teenth  
count.  
Fifteenth  
and six-  
teenth  
counts.

Same as Thirteenth, except in the conclusion, which from the words "for expressing, &c." resembled the tenth.

The\* fifteenth and sixteenth counts were like the thirteenth and fourteenth, except that the word paper was used instead of parchment.

The eight next counts resembled the last eight, except that the word stamp was used instead of mark.

On statute  
36 Geo.  
III. c. 125.

That J. C. late of, &c. on, &c. at, &c. aforesaid, with force and arms, feloniously did counterfeit and forge, and procure for forging to be counterfeited and forged, a stamp and mark, to resem-

ble a stamp and mark then and there directed to be used in pursuance of a certain act of parliament made at Westminster in the county of Middlesex, in the thirty sixth year of the reign, &c. intituled an act for the better collection of the duty on hats, for the purpose of denoting the stamp duty of two shillings, charged by virtue of the statute in such case made and provided, for every felt or wool stuff, or beaver hat, or any leather or japanned hat, exceeding the price or value of twelve shillings, which should be uttered, vended, or sold by any person or persons, taking out, in pursuance of the statute in such case made and provided, a license for vending or uttering in Great Britain, by retail, any hat called or known by the name of felt or wool, stuff or beaver hats, or any leather or japanned hats, with intent to defraud our said lord the king, in contempt of our said lord the king and his laws, against the peace, &c. and against the form of the statute, &c. There was a second count, charging the forging and counterfeiting a stamp or mark, to resemble a stamp or mark then and there used in pursuance of a certain act of parliament, intituled, &c. A third count for feloniously counterfeiting and resembling the impression of a certain mark then and there directed to be used, &c. And a fourth count for feloniously counterfeiting and resembling the impression of a certain mark then and there used, &c.

That D. R. late of, &c. calico printer, not having the fear of God before his eyes, but being moved and seduced by the instigation\* of the devil, and contriving, and wickedly intending our said lord the king craftly, falsely, deceitfully and feloniously to deceive and defraud of the duties payable to and for the use of our said lord the king, by the statute in that case made and provided, for and upon pieces of printed linen, or stained, painted, and dyed, in Great Britain, on, &c. with force and arms, at, &c. aforesaid, upon each of the said pieces of linen, such linen being then and there linens chargeable by the statute in that case made and provided with duties payable for the same, and for the use of our said lord

On 10 Ann  
c. 19. s.  
97. a-  
gainst a  
calico  
printer for  
forging a  
stamp on  
calico. (h)  
[\*1061]  
First  
count for  
counter-  
feiting and  
forging a  
stamp on  
linen.

(g) This was the indictment against Collins, on which he was convicted, 2 Leach, 827. Two objections were made for the prisoner: 1st. That the indictment charged the prisoner with having forged a stamp to denote a duty charged by virtue of 36 Geo. III. c. 125. whereas that statute does not itself charge any duty, but repeals part of 24 Geo. III. c. 51. and that a stamp denoting the duties directed by the former act shall be affixed on the lining

of every hat, and therefore the stamp was imposed by 24 Geo. III. 2ndly. That under these circumstances the conclusion ought to have been against the form of the statutes in the plural; but both objections were over-ruled and the conviction was supported, 2 Leach, 827. As to the law, see general note, ante 1022 to 1044. and as to form of indictment, ante 1039.

(h) See a similar precedent, 4 Wentw. 22.

Second  
count.

the king, falsely, deceitfully, and feloniously did counterfeit and forge a certain stamp, to resemble a certain stamp then and there provided by the commissioners of excise for the time being, appointed for the management of duties pursuant to the statute in that case made and provided, to denote the charging of the several duties by the statute in that case made and provided, chargeable upon linens printed, painted, stained or dyed in Great Briatain as aforesaid, and payable to and for the use of our said lord the king, thereby to defraud our said lord the king, for and upon the said pieces of linen so printed, stained, painted and dyed in Great Britain as aforesaid, against the form of the statute, &c. against the and peace, &c. And the jurors, &c. do further present, that the said D. R. contriving and wickedly intending our said lord the kind craftily, falsely, deceitfully and feloniously to deceive and defraud of the duties payable to and for the use of our said lord the king, by the statute in that case made and provided for, upon '——' other pieces of linen printed, stained, painted and dyed in Great Britain, on, &c. with force and arms, at, &c. aforesaid, falsely, deceitfully and feloniously, did counterfeit and resemble upon each of the said last mentioned pieces of linen stained, printed, and dyed in Great Britain, and not being linens dyed throughout of one colour only, and then and there being linens chargeable by the statute in that case made and provided with duties payable for the same, and for the use of our said lord the king, the impression of a certain stamp then and there provided by the commissioners of excise, for the time being, appointed for the managing of such duties for the time being, by the statutes in that case made and provided, chargeable on linens printed, stained, painted or dyed in Great Britain aforesaid, and payable to and for the use of our said lord the king, thereby to defraud our said lord the king of the said duties, by virtue of the said statutes payable to our said lord the king, upon the said last mentioned '——' pieces of linen, against the form of the statute, &c. and against the peace, &c.

[\*1062]  
On 9 Ann,  
c. 11. s.  
44. for  
forging a  
stamp re-  
sembling  
the stamp  
used by  
the king's  
officers  
for mark-  
ing and  
stamping  
hides and  
[\*1062]

That in pursuance of and according to the form of the statute in such case made and provided, a certain stamp, on, &c. at, &c. was made, provided, and appointed for the marking and stamping of\* hides and skins, and of pieces of hides and skins, and of vellum and parchment, tanned, tawed, dressed, or made within England or Wales, or town of Berwick upon Tweed, to denote the charging of the duties by the statute in such case made and provided, payable to our said lord the king, for and in respect thereof, which said stamp on the said, &c. at, &c. aforesaid, was used for the purpose aforesaid, and that one T. C. late, of &c. afterwards, and after the making of the statute in that case made and

provided, to wit, on the said, &c. at, &c. aforesaid, with force and arms, feloniously did counterfeit and forge a certain stamp, to resemble the said stamp so as aforesaid made and provided and appointed, and then and there used, in pursuance of and according to the form of the statute in such case made and provided, with intent thereby to defraud our said lord the king of the duties aforesaid, in contempt of our said lord the king and his laws, against the peace, &c. and contrary to the form of the statute, &c. And the jurors, &c. do further present, that in pursuance of and according to the form of the statute in such case made and provided, a certain stamp, on, &c. at, &c. aforesaid, was made, provided, and appointed, for the marking and stamping of hides and skins, and of pieces of hides and skins, and of vellum and parchment, tanned, tawed, dressed or made in England or Wales, or town of Berwick upon Tweed, to denote the charging the duties by the statutes in such case made and provided, payable to our said lord the king, for and in respect thereof, which said last mentioned stamp from the day and year last aforesaid, until, &c. at, &c. aforesaid, was used for the purposes last aforesaid, and that the aforesaid T. C. after the making of the statute in such case made and provided to wit, at divers times, and in and upon divers days within the time last aforesaid, at, &c. aforesaid, with force and arms, in and upon several hides, and in and upon several skins, and in and upon several pieces of hides, and in and upon several pieces of skins, that is to say, in and upon twenty hides, and in and upon twenty skins, and in and upon twenty pieces of hides, and in and upon twenty pieces of skins respectively, tanned within Wales, the impression of the said last mentioned stamp feloniously did counterfeit and resemble, with intent thereby to defraud our said lord the king of the duties last aforesaid, contrary to the form of the statute, &c. and against the peace, &c. [*Third count similar to the second, only stating that T. C. did thereby defraud, &c. instead of averring the real intention. Fourth count for selling and uttering.*]

That\* J. G. gent. and E. his wife, in right of her the said E. on, &c. and long before were and continually from thence hitherto have been, and still are seised in their demesne as of fee of and in certain messuages, lands and tenements, called J. with their appurtenances in the parish of C. in the county of E. and that J. C. late of, &c. being a person of evil name and fame, and of a wicked disposition, and contriving and intend-

shins, and pieces of hides and skins, &c.

(i) First count, for forging a stamp to resemble, &c.

Second count, for counterfeiting and resembling impression upon hides, &c.

(i) See a similar precedent, Cro. to 1044. and as to form of indictment, ante 1039.  
C. C. 408. 7th Ed. 8th Ed. 220. as to law, see general note, ante 1022

[\*1063] For forging indentures of bargain and sale for a year, and a release of another's freehold

estate in  
right of  
his wife,  
upon stat.  
5 Eliz. c.  
14. (k)

First  
count stat-  
ing part of  
the inden-  
ture of  
bargain  
and for a  
year.

[\*1064]

ing the said J. G. and E. his wife unjustly to aggrieve, and with an intent the state of freehold of them the said J. G. and E. of and in the said lands, tenements and hereditaments called J. in, &c. aforesaid, and the right, title, and interest of the said J. G. and E. of and in the same should be molested and troubled, afterwards, to wit, on the said, &c. at, &c. upon his own head and imagination with force and arms, wittingly, subtly and falsely did forge and make and cause to be forged and made, a certain false writing sealed purporting to be sealed and delivered by the said J. G. and E. and in itself purporting to be an indenture of bargain and sale for one year, and to bear date, on, &c. and supposed to be made between them the said J. G. and E. by the names of J. G. of the city of G. gentleman, and E. his wife of the one part, and the aforesaid J. C. by the name of J. C. of L. merchant, of the other part, in which said indenture is mentioned and supposed in substance, (among other things) "That for and in consideration of the sum of five shillings of lawful money of Great Britain to the said J. G. and E. his wife in hand paid by the said J. C. at or before the sealing and delivery of the same indenture, the receipt whereof the said J. G. and E. his wife thereby are mentioned to have acknowledged, they the said J. G. and E. his wife had granted, bargained, and sold unto the said J. C. all that park, &c. [*setting forth the description of the premises.*] to have and to hold the said park, trees, woods, underwoods, deer, hereditaments and appurtenances thereby bargained and sold, or meant, mentioned, or intended so to be, and every part thereof unto the said J. C. his executors, administrators, and assigns, from the day next before the date of the same indenture, for and during and until the full end and term of one whole year from thence next following, and fully to be complete and ended, yielding and paying therefore upon the last day of the said term, thereby granted the rent of one pepper corn if the same should be lawfully demanded;" to the intent and purpose that by virtue thereof and of the statute for transferring uses into possession, the said J. C. might\* be in actual possession of all and singular the said premises thereby granted, bargained and sold, or meant or intended so to be, and thereby might be enabled to receive and take the grant and release, reversion and inheritance thereof, to the use of himself, his heirs and assigns for ever, to the great damage of the said J. G. and E. his wife, against the form of the statute, &c. and

(k) See similar precedents, Cro. C. C. 7th. Ed. 379. 8th Ed. 209. Starkie, 481. As to the law, see general note, ante 1044 to 1022. and as to the form of indictment, ante 1039.



against the peace, &c. And the jurors, &c. do further present, that the said J. C. contriving and intending the said J. G. and E. his wife as aforesaid, unjustly to aggrieve, and with the said intent that the state of freehold of them the said J. G. and E. in right of the said E. of and in the said lands, tenements and hereditaments, and the right, title and interest of them the said J. G. and E. of and in the same, should be molested and troubled, on the said, &c. at, &c. aforesaid, upon his own head and imagination with force and arms, &c. wittingly, subtly and falsely did forge and make, and cause to be forged and made one other false writing sealed, in itself purporting to be an indenture of release, and to bear date on the twenty-second day of September, in the said first year of the reign of our said lord the now king, and supposed to be made between them the said J. G. and E. his wife by the names of J. G. of the city of G. gentleman, and E. his wife of the one part, and the said J. C. by the name of J. C. of L. merchant, of the other part, in which said indenture of release is mentioned, and supposed in substance, (among other things) "That for and in consideration of the sum of four thousand five hundred pounds of lawful money of Great Britain, to the said J. G. and E. his wife in hand paid by the said J. C. at or before the sealing and delivery of the said indenture of release, the receipt and payment whereof the said J. G. and E. his wife by the same indenture of release are mentioned to have acknowledged, and of the same and every part thereof to have acquitted, exonerated and discharged the said J. C. his heirs, executors, administrators and assigns, and every of them, thereby they the said J. G. and E. his wife had granted, bargained, sold, aliened, re-released and confirmed, and by the same indenture of release have granted, bargained, sold, aliened, released and confirmed to the said J. C. as by the same indenture is supposed (in his actual possession then being, by virtue of a bargain and sale to him thereof, made and granted by the said J. G. and E. his wife in consideration of five shillings, by indenture bearing date the day next before the day of the date of the same indenture of release for one whole year, to begin from the day next before the day of the date of the said indenture of bargain and sale, and mentioned to be executed before the supposed sealing and delivery of the same indenture of release, and by force of the statute for transferring uses into\* possession,) to his heirs and assigns for ever, all that part, &c. [*again setting out the premises.*] to have and to hold the said park, trees woods, underwoods, deer, hereditaments and appurtenances, thereby granted and released, or meant, mentioned or intended so to be, and every part thereof to the

Second  
count for  
forging  
the re-  
lease.

[\*1065]

Third  
count for  
publishing  
the inden-  
ture of  
bargain  
and sale  
for a year.

said J. C. heirs and assigns, and to the only proper use, benefit and behoof of the said J. C. his heirs and assigns; to the great damage, &c. [*as before.*] And the jurors, &c. do further present, that the said J. C. being a person of evil name and fame, and of a wicked disposition, and contriving and intending the said J. G. gentleman, and E. his wife unjustly to aggrieve, and with an intent that the state of freehold of them the said J. G. and E. in right of the said E. of and in certain lands, tenements and hereditaments, called J. in, &c. aforesaid, and the right, title and interest of the said J. G. and E. of and in the same should be molested and troubled, on the said, &c. at the said, &c. with force and arms, falsely did *pronounce* and publish one false, forged writing, sealed, purporting to be sealed and delivered by the said J. G. and E. his wife, as a true writing, he the said J. C. knowing that writing to be a false, forged and counterfeited writing, the same writing in itself purporting to be an indenture of bargain and sale for one year, and to bear date, on, &c. and to be made between the said J. G. and E. by the names of J. G. of the city of G. gentleman, and E. his wife, of the one part, and the said J. C. by the name of J. G. of L. merchant, of the other part, in which same last mentioned indenture of bargain and sale is mentioned and supposed in substance (among other things) "That, &c." *set out the indenture as in the first count.*] to the intent and purpose that by virtue thereof, and of the statute for transferring uses into possession, the said J. C. might be in actual possession of all and singular the said premises thereby granted, bargained and sold, or meant and intended so to be, and thereby might be enabled to accept and take the grant and release, reversion and inheritance thereof, to the use of himself, his heirs and assigns, for ever, (he the said J. C. at the said time that he the said J. as aforesaid did publish and pronounce the said false, forged writing as a true writing, well knowing that writing to be falsely forged,) to the great damage, &c. [*Conclusion as ante 1064. Fourth count like the third in form, for publishing the forged indenture of release, setting out the instrument as in second count.*]

On 2 Geo.  
II. c. 25.  
for forging  
a bond  
signed  
with a  
mark and  
publishing  
the same,  
with in-  
tent to de-  
fraud the  
executors  
of the per-  
son sup-  
posed to  
have made  
it. (1)

Nottingham. That B. W. late of, &c. and W. M. late of, &c. on, &c. with force and arms, at, &c. aforesaid, feloniously did falsely make, forge and counterfeit, and did cause and procure to be falsely made, forged and counterfeited, a certain

(1) See a similar precedent Cro. C. C. 395. 7th Ed. Starkie, 497. This precedent was framed on 2 Geo. II. c. 25. but bouds are included in 45 Geo. III. c. 89. though

the form would still be similar. As to the law, see general note, ante 1022. to 1044. and as to the form of indictment, ante 1039.

bond, purporting\* (m) to be signed by one J. L. then deceased, in his life time, with the mark of him the said J. L. and to be sealed and delivered by the said J. L. in his life time, the tenor of which said bond is as follows, "Know all men, &c. [*here set out the bond verbatim.*] the mark of J. + L. Sealed and delivered in the presence of — the mark of A. B. C. D." with intent to defraud W. B. and T. W. executors of the last will and testament of the said J. L. of the sum of two hundred and fifty pounds, against the form of the statute, &c. and against the peace of, &c. And the jurors, &c. do further present, that the aforesaid B. W. and W. M. afterwards, to wit, on the said, &c. at, &c. aforesaid, a certain false, forged and counterfeit bond, purporting to have been signed by the said J. L. then deceased, in his life time, with his mark, and to have been sealed and delivered by the said J. L. in his life time, with force and arms, feloniously did utter and publish as a true bond; which said bond so as aforesaid falsely made and counterfeited, is in the words and figures following, [*here set out the bond.*] with an intent to defraud the said W. B. and T. W. executors of the last will and testament of the said J. L. of the sum of two hundred and fifty pounds, the said B. M. and W. M. at the time of publishing the said last mentioned false, forged and counterfeit bond, by them as aforesaid, then and there well knowing, and each of them well knowing the said bond to have been false, forged and counterfeited, against the form of the statute, &c. and against the peace, &c.

Second  
count.

That A. B. late of, &c. on, &c. at, &c. aforesaid, feloniously did falsely make, forge and counterfeit, and feloniously did cause and procure to be falsely made, forged and counterfeited; and feloniously did willingly act and assist in the false making, forging and counterfeiting, a certain bond, which said false, forged and counterfeited bond is as follows, that is to say, "Know all men, &c." [*here set out a fac simile of the bond and condition.*] with intention to defraud the said W. A. against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, feloniously did utter and publish as true a certain other false, forged and counterfeited bond, which said\* last mentioned false, forged and counterfeited bond, is as follows, that is to say, "Know, &c." [*set out the bond as before,*] with intention to defraud the said W. A. he the said

On 2 Geo. II. c. 25. for forging and uttering a bond, with intention to defraud two different persons. (n) First count for forging the bond. Second count for uttering it knowing it be forged.

[\*1067]

(m) As to the propriety of stating the purport, see ante 1040.

(n) See a similar precedent Cro. C. C. 217. Cro. C. A. 419. As to

the law, see general note, ante 1022 to 1044. and as to form of indictment, ante 1039.

A. B. at the time of the uttering and publishiag of the said last mentioned false, forged and counterfeited bond, then and there well knowing the same to be false, forged and counterfeited, against the form of the statute, &c. and against the peace, &c.

Indictment for forging a will, on 2 Geo. II. c. 25. and 45. Geo. III. c. 89. which re-enacts its provisions. (o) First count for forging with intent to defraud the heir at law.

Second count for uttering and publishing with a like intention.

[\*1068]

That S. L. widow, heir at law of Sir A. C. knight, deceased, on, &c. and long before, was and still is seised in her demesne as of fee of and in certain messuages and tenements, with the appurtenances, situate and being in, &c. as heir at law of the said Sir A. C. who died seised thereof in his demesne as of fee, and that E. B. late of, &c. and M. M. late of, &c. on, &c. aforesaid, at, &c. aforesaid, with force and arms, feloniously did falsely make, forge, and counterfeit, and feloniously did cause and procure to be falsely made, forged, and counterfeited, and feloniously did willingly act and assist in the false making, forging and counterfeiting, a certain paper writing with a seal thereto affixed, purporting (p) to be the last will and testament of the said Sir A. C. deceased, and to be signed by the said Sir A. C. in his life-time, with the name of A. C. and to be sealed and delivered by the said Sir A. C. in his life-time, as and for his last will and testament, the tenor of which said false, forged, and counterfeited will in writing is as follows, that is to say; "In the name of God, amen: 1 A. C. &c." [*set out the will verbatim, as it may be,*] with intent to defraud the said S. L. of the said messuages and tenements, with the appurtenances, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said S. L. on the said, &c. and long before, was and still is seised in her demesne as of fee of, and in certain messuages and tenements, with the appurtenances, situate and being in, &c. aforesaid, as heir at law of the said Sir A. C. who died seised thereof in his demesne as of fee, and that the said E. B. and M. M. afterwards, to wit, on the said, &c. at, &c. aforesaid, a certain false, forged and counterfeited paper writing, with a seal thereto affixed, purporting to be the last will and testament of the said Sir A. C. deceased, and to be\* signed by the said Sir. A. C. in his life-time, with the name of A. C. and to be sealed and delivered by the said Sir A. C. in his life-time, as and for his last will and testament, with force and

(o) See this precedent, Cro. C. 225. Starkie. 503. It was the indictment against Birch and Martin on which they were convicted and executed, see 1 Leach 79. See indictments for forging a will, 10 Harg. St. Tr. 183. As to the law see general note, ante 1022 to 1044.

and as to the form of indictment ante 1039.

(h) An objection was taken to this mode of expression as not bringing the case within the words of the statute but it was held sufficient, 1 Leach, 79.

arms, feloniously did utter and publish, as a true will in writing, the tenor of which said false, forged, and counterfeited will in writing is as follows, that is to say, [*here set out the will as before,*] with intention to defraud the said S. L. of the said last mentioned messuages and tenements, with the appurtenances, (they the said E. B. and M. M. at the time of the uttering and publishing of the said false, forged and counterfeited will in writing, by them as aforesaid, then and there well knowing the same will to be false, forged and counterfeited,) against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said Sir A. C. knight, deceased, was in his life-time, to wit, on, &c. aforesaid, and long before, seised in his demesne as of fee, of and in certain messuages and tenements, with the appurtenances, situate and being in, &c. aforesaid, and on the said, &c. at, &c. aforesaid, died so seised of and in the said messuages and tenements, with the appurtenances, without disposing thereof by his last will and testament to any person or persons whatsoever, whereby the said messuages and tenements, with the appurtenances, at, &c. aforesaid, upon the death of the said Sir A. C. descended and came to the said S. L. as the heir at law of the said Sir A. C. and that the said E. B. and M. M. afterwards, to wit, on the said, &c. at, &c. aforesaid, with force and arms, feloniously did falsely make, forge and counterfeit, and feloniously did willingly act and assist in the false making, forging and counterfeiting a certain paper writing, with a seal thereto affixed, purporting to be the last will and testament of the said Sir A. C. deceased, and to be signed by the said Sir A. C. in his life time, with the name of A. C. and to be sealed and delivered by the said Sir A. C. in his life time, as and for his last will and testament, the tenor of which said false, forged and counterfeited will in writing, is as follows, that is to say, &c. [*here set out the will as before,*] with intention to defraud the said S. L. of the said last mentioned messuages and tenements, with the appurtenances, against the form, &c. and against the peace, &c. [*Fourth count for uttering such will, bearing the same resemblance to the third, that the second does to the first.*] And the jurors, &c. do further present, that the said Sir A. C. knight, deceased, was in his life time, to wit, on the said, &c. and long before, seised in his demesne as of fee, of and in certain messuages and tenements, with the appurtenances, situate and being in the parish, &c. and on the said, &c.\* at, &c. aforesaid, died so seised of and in the said messuages and tenements, with the appurtenances, without disposing thereof by his last will and testament to any person or persons whatsoever, and that the said E. B. and M. M. afterwards, to wit, on the said, &c. at, &c. aforesaid, with force and arms, felo-

Third count, stating that Sir A. C. died seized, &c. without making a will, and that they forged with intent to defraud the heir.

Fourth count. Fifth count for uttering with intent to defraud the person who would by law be entitled. [\*1069]

niously did utter and publish as true, a certain false, forged and counterfeited paper writing with a seal thereto affixed, purporting to be the last will and testament of the said Sir A. C. deceased, and to be signed by the said Sir A. C. in his life time, with the name of A. C. and to be sealed and delivered by the said Sir A. C. in his life time, as and for his last will and testament, the tenor of which said false, forged and counterfeited will in writing, is as follows, that is to say, "In the name, &c." [*here set out the will as before,*] with intention to defraud the person or persons who would by law be entitled to the aforesaid messuages and tenement, with the appurtenances, whereof the said Sir A. C. died seized so as aforesaid, (they the said E. B. and M. M. at the time of the uttering and publishing of the said false, forged and counterfeited will in writing by them as aforesaid, then and there well knowing the same will to be false, forged and counterfeited,) against the form of the statute, &c. and against the peace, &c.

For forg-  
ing a will  
of copy-  
hold  
premises,  
and per-  
sonalty to  
defraud  
the co-  
heiresses  
at law who  
were all  
married.  
(g)

\*1070]

That N. A. late of, &c. deceased, was in his life time, to wit, on, &c. and long before, and at the time of his death seized of and in five sixth parts undivided of and in three certain copyhold or customary messuages, lands and tenements, with their appurtenances, situate in, &c. and held of the lord of the manor of S. in the said county of M. according to the custom of the manor of S. and that the said five sixth undivided parts of and in the said three copyhold or customary messuages, lands and tenements, with their appurtenances, on the death of the said N. A. intestate, by the custom of the said manor of S. otherwise S. would have descended to the heir or heiresses at law of the said N. A. and that S. the wife of T. G. of, &c. M. the wife of C. S. of, &c. and E. the wife of G. P. of, &c. are the coheiresses at law of the said N. A. deceased, and that C. M. late of, &c. G. P. and T. F. late of, &c. aforesaid, gentleman, on, &c. aforesaid, with force and arms, feloniously did falsely make, forge and counterfeit and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting, a certain paper writing with a seal thereto affixed, purporting to be the last will and testament of the said N. A. deceased, and\* to be signed by the said N. A. in his life time with the name of N. A. and to be sealed, declared and published in his life time, as and for his last will and testament, the tenor of which false, forged and counterfeited will, is as follows, that is to say, [*here insert a copy of the will forged, verbatim,*

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(g) See a similar precedent, 4 note, ante 1022 to 1044. and as to Went. 35. As to law, see general form of indictment, ante 1039.



*with the attestation and witnesses' names,]* with intention to defraud the said S. the wife of the said T. G. M. the wife of the said C. S. and E. the wife of the said G. P. of the said copyhold messuages, lands and tenements, with their appurtenances, against the form of the statute, &c. and against the peace, &c. [*Second count for uttering with a like intent, like second count in the last precedent.*] [*The third count the same as the first with intention to defraud the coheiresses and their husbands, as follows,*] with intent to defraud the said T. G. and S. his wife, C. S. and M. his wife, and G. P. and E. his wife, of the said last mentioned five sixth parts undivided, of and in the said three last mentioned copyhold or customary messuages, lands and tenements, with their appurtenances, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. [*The fourth count like the second, only stating the intention to be, to defraud the with their wives the coheresses, as follows,*] with intent to defraud the said T. G. and S. his wife, C. S. and M. his wife, and G. P. and E. his wife, of the said last mentioned five sixth parts undivided, of and in the said three last mentioned copyhold or customary messuages, lands and tenements, with their appurtenances, &c. [*The fifth count like the first, to defraud the heir or heiresses at law, by forging the will, as follows,*] with intent to defraud the heir or heiresses at law of the said N. A. deceased, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. [*The sixth count the same as the second, to defraud the heir or heiresses by uttering the forged will, as follows,*] with intent to defraud the heir or heiresses at law of the said N. A. deceased, (they the said C. M. otherwise S. otherwise A. G. P. and T. F. at the time of uttering and publishing of the said false, forged and counterfeited will in writing, by them as aforesaid, then and there well knowing the said will to be false, forged and counterfeited,) against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. [*The seventh count like the fifth, except in these words, "with intent to defraud the next of kin," as follows,*] with intent to defraud the next of kin, of the said N. A. deceased, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and\* dig- [\*1071] nity. [*The eighth count like the sixth, except by uttering to defraud the next of kin, as follows,*] with intent to defraud the next of kin of said N. A. deceased, they the said

Ninth  
count  
that N. A.  
died with-  
out a will  
and state-  
ing for-  
gery to be  
with in-  
tention to  
defraud  
the person  
or persons  
entitled  
by law to  
the copy-  
hold

C. M. otherwise S. otherwise A. G. P. and T. F. at the time of uttering and publishing of the said false, forged and counterfeit will in writing by them as aforesaid, then and there well knowing the said will to be false, forged and counterfeited, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity. And the jurors, &c. do further present, that the said N. A. deceased, was in his life-time, to wit, on, &c. and long before, and at the time of his death, seised of, and in five sixth parts undivided of, and in three copyhold or customary lands or tenements, with their appurtenances, situate in, &c. aforesaid, and held of the lord of the manor of S. in the said county of M. according to the custom of the said manor, and on, &c. at, &c. died, so seised of and in the said last mentioned five sixth parts undivided of, and in the said three last mentioned copyhold or customary messuages, lands and tenements, with their appurtenances, without disposing thereof by his last will and testament, to any person or persons whomsoever, and that the said C. M. and T. F. afterwards, to wit, on the said, &c. at, &c. aforesaid, with force and arms, feloniously did utter and publish as true, a certain false, forged and counterfeited paper writing, with a seal thereto affixed, purporting to be the last will and testament of the said N. A. deceased, and to be signed by the said N. A. in his life-time with the name N. A. and to be sealed, declared and published by the said N. A. in his life-time, as and for his last will and testament, the tenor of which false, forged and counterfeited will in writing, is as follows, [*here insert the will,*] with intent to defraud the person or persons who would by law be entitled to the aforesaid last mentioned copyhold or customary messuages, lands and tenements, with their appurtenances, whereof the said N. A. died so seised as last aforesaid, they the said C. M. and T. F. at the time of the uttering and publishing of the said false, forged and counterfeited will in writing, by them as aforesaid, at, &c. aforesaid, well knowing the said will to be false, forged and counterfeited, against the form of the statute, &c. and against the peace, &c.

[\*1072]  
Indict-  
ment for  
ging, &c.  
a bill of  
exchange,  
an accept-  
ance  
thereof,  
and an in-  
dorsement

— To wit, the jurors for our lord the king, upon their oath present, that A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting a certain\* bill of exchange; which said false, forged and counterfeited bill of exchange is as follows, that is to say,

No. 10. £. 54. 1s. Bristol, America, 17th Sept. 1797.

Three months after sight pay to Messrs. S. R. and son, or order, fifty-four pounds one shilling, — value received.

A. M.

To Mr. R. G.  
Old Change,  
London.

With intention to defraud A. S. and W. I. against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown, and dignity. And the jurors, &c. do further present, that the said A. B. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, feloniously did utter and publish as true, a certain other false, forged and counterfeited bill of exchange, which said last-mentioned false, forged and counterfeited bill of exchange is as follows, that is to say,

No. . [*Here set out the bill exactly as before.*]

With intention to defraud the said A. S. and W. I. (he the said W. B. at the said time he so uttered and published the said last mentioned false, forged and counterfeited bill of exchange as aforesaid, then and there, to wit, on the said, &c. at, &c. aforesaid, well knowing the same to be false, forged, and counterfeited,) against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B. afterwards, to wit, on the said, &c. at, &c. aforesaid, having in his possession a certain other bill of exchange, which said last mentioned bill of exchange is as follows, that is to say, No. [*here set out the bill as before*] he the said W. B. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting on the said last mentioned bill of exchange an acceptance of the said bill of exchange,\* which said false, forged and counterfeited acceptance is as follows, that is to say,

thereon with intent to defraud the persons to whom it was delivered in payment or goods.

(r)  
First count for forging the bill with intention to defraud A. S. and W. I.

Second count for uttering the bill with a like intention.

Third count for forging an acceptance of the bill with a like intention.

[\*1073]

(r) See similar precedents, Cro. C. C. 223. Starkie, 493.—See an indictment for forging a bill, acceptance and indorsement, with intent to defraud different parties, Cro. C. C. 413. 7th Ed.—forging an indorsement 4 Wentw. 32.—forging a bill with several indorsements, 4

Crim. Law.

Wentw. 28.—forging and publishing an acceptance on a bill of exchange Cro. C. C. 398. 7th Ed. The offence is made capital by 2 Geo. II. c. 25, 7 Geo. II. c. 22 45 Geo. III. c. 89. see general note ante 1022. to 1044. and as to form of indictment ante 1039.

Accd. R. G.

Nov. 30th.

Fourth  
count for  
uttering  
the accep-  
tance with  
a like in-  
tention.

with intention to defraud the said A. S. and W. I. against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said W. B. afterwards, to wit, on the said, &c. at, &c. aforesaid, having in his custody and possession a certain other bill of exchange, which said last mentioned bill of exchange is as follows, that is to say, No. [*here set out the bill as before,*] and on which said last mentioned bill of exchange, was then and there, to wit, on the said, &c. at, &c. aforesaid, written a certain false, forged and counterfeited acceptance of the said last mentioned bill of exchange, which said false, forged and counterfeited acceptance of the said last mentioned bill of exchange is as follows, that is to say,

Accd. R. G.

Nov. 30th.

Fifth  
count for  
forging an  
indorse-  
ment on  
the bill  
with a  
like inten-  
tion.

he the said W. B. well knowing the premises last aforesaid, afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, feloniously did utter and publish as true, the said false, forged and counterfeited acceptance of the said last mentioned bill of exchange, with intent to defraud the said A. S. and W. I. (he the said W. B. at the said time he so uttered and published as true the said false, forged and counterfeited acceptance of the said last mentioned bill of exchange, then and there, to wit, on the said, &c. at, &c. aforesaid, well knowing the same last mentioned false, forged and counterfeited acceptance to be false, forged and counterfeited,) against the form of the statute, &c. and against the peace. &c. And the jurors, &c. do further present, that the said W. B. afterwards, to wit, on the said, &c. at, &c. aforesaid, having in his custody and possession, a certain other bill of exchange, which said last mentioned bill of exchange is as follows, that is to say, No. [*here set out the bill without the acceptance, as in the first count,*] he the said W. B. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting on the back of the said last mentioned bill of exchange, an indorsement in writing of the said S. R. and son, of the said last mentioned bill of exchange, which said false, forged and counterfeited indorsement is as follows, that is to say, "S. R. and son," with in-

tention to defraud the said A. S. and W. T. against the form of the statute, &c. and against the peace, &c.\* And the jurors, &c. do further present, that the said W. B. afterwards, to wit, on the said, &c. at, &c. aforesaid, having in his custody and possession a certain other bill of exchange, which said last mentioned bill of exchange is as follows, that is to say, [*here set out the bill,*] and on the back of which said last mentioned bill of exchange, there was then and there, to wit, on the said, &c. at, &c. aforesaid, written a certain false, forged and counterfeited indorsement of the said S. R. and son, of the said last mentioned bill of exchange, which said last mentioned false, forged and counterfeited indorsement is as follows, that is to say, "S. R. and son," he the said W. B. well knowing the premises last aforesaid, afterwards, to wit, on the said, &c. with force and arms, at, &c. feloniously did utter and publish as true the said last mentioned false, forged and counterfeited indorsement of the said last mentioned bill of exchange, with intention to defraud the said A. S. and W. I. (he the said W. B. at the said time he so uttered and published the said last mentioned false, forged and counterfeited indorsement of the said last mentioned bill of exchange, then and there, to wit, on the said, &c. at, &c. aforesaid, well knowing the same last mentioned indorsement to be false, forged and counterfeited) against the form of the statute, &c. and against the peace. &c.

[\*1074]  
Sixth  
count for  
uttering  
the in-  
dorsement  
with a like  
intention.

That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making forging and counterfeiting a certain promissory note, in the words letters and figures following, that is to say, [*here set out the note verbatim,*] with intent to defraud one W. T. against the form of the statute, &c. and against the peace, &c. [*Counts may be added corresponding with those in the last precedent.*]

For forg-  
ing a  
promisso-  
ry note.  
(s)

London, to wit. The jurors for our lord the king, upon their oath present, that upon the back of a certain order for delivery of goods, to wit, for delivery of seven hundred and twenty nine hides, the tenor of which said order is as follow-  
eth, that is to say,

On 7 Geo.  
II. c 22.  
forging  
and assist-  
ing in  
forging an  
order for  
the deli-  
very of  
goods on  
the back  
of another  
order,  
with in-  
tent to de-  
fraud the  
London  
dock com-  
pany. (t)

(s) This precedent is from 2 N. R. 87. It is founded on the same acts with those which affect the forgery of bills of exchange, 2 Geo. II. c.

25. 7 Geo. II. c. 22. 45 Geo. III. c. 89. (t) See an indictment for forging an order for payment of money, 1 Leach, 248.

[\*1075]

Charges from 22nd June last, to  
be paid by P. Broadmead.

No. 17.

London,\* 26th July, 1814.

To the superintendent of the London Docks. Please weigh and transfer, or deliver to the order of Mr. P. Broadmead, the under mentioned goods, entered by us in the ship Hope,  
 Capt. Lyal, from Cadiz.  
 Mark No.

654 B. } Hides.  
 75 C. }

for sir J. Lubbock and Co.  
 James Dennington.

Edward Taylor, late of, &c. and R. W. T. late of, &c. heretofore, to wit, on, &c. with force and arms, at, &c. aforesaid, feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting a certain other order for delivery of the said goods, the tenor of which said false, forged and counterfeited order is as followeth, that is to say,

Deliver the within to Messrs. Widow  
 Robert Taylor and Sons, they paying all charges.

Feb. 16, 1815.

P. Broadmead.

with intention to defraud the London Dock company, against the form of the statute, &c. and against the peace, &c.

Second  
 count for  
 disposing  
 of and putting away  
 a forged  
 order for  
 delivery of  
 goods, indorsed on  
 another  
 order  
 knowing  
 the same  
 to be forged.

And the jurors, &c. do further present, that heretofore, to wit, on the said, &c. at, &c. aforesaid, upon the back of a certain other order for delivery of goods, to wit, for delivery of seven hundred and twenty-nine hides, the tenor of which said last mentioned order is as followeth, that is to say, [*here set out the original order as before.*] was then and there written a certain other false forged and counterfeited order for delivery of the said goods, the tenor of which said last mentioned false, forged and counterfeited order is as followeth, that is to say, [*here set out indorsement as before.*] And that the said E. T. and R. W. T. then and there, to wit, on the said, &c. with force and arms, at, &c. aforesaid, feloniously did dispose of and put away the said last mentioned false, forged and counterfeited order, with intention to defraud the London Dock Company; they the said E. T. and R. W. T. at the said time of their so disposing of and putting away the said last mentioned false, forged and counterfeited order, then and there, to wit, on\* the said, &c. at, &c. aforesaid, well knowing the same to be false, forged and coun-

[\*1076]



terfeited, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said E. T. and R. W. T. on the said, &c. with force and arms, at, &c. aforesaid, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting a certain other order for delivery of goods, the tenor of one part of which said last mentioned false, forged and counterfeited order then and there contained on the face thereof, is as followeth, that is to say, *[here set out the order dated 26th July, 1814.]* and the tenor of the residue of which said last mentioned false, forged and counterfeited order then and there contained on the back thereof is as followeth, that is to say, *[here set out the indorsement,]* with intention to defraud the London Dock Company, against the form, &c. and against the peace, &c.

Third count for forging both the face and indorsement of an order for the delivery of goods.

And the jurors, &c. do further present, that the said E. T. and R. W. T. on, &c. with force and arms, at, &c. aforesaid, feloniously did dispose of and put away, a certain other false, forged and counterfeited order for delivery of goods, the tenor of one part of which said last mentioned false, forged and counterfeited order then and there contained on the face thereof is as followeth, that is to say, *[here set forth the order dated the 26th July, 1814.]* and the tenor of the residue of which said last mentioned false, forged and counterfeited order then and there contained on the back thereof, is as followeth, that is to say, &c. *[here set out the indorsement,]* with intention to defraud the London Dock Company; they the said E. T. and R. W. T. at the said time of their so disposing of and putting away the said last mentioned false, forged and counterfeited order, then and there, to wit, on the said, &c. at, &c. aforesaid, well knowing the same to be false, forged and counterfeited, against the form of the statute, &c. and against the peace, &c. *[The 5th, 6th, 7th, and 8th counts, like the four first,]* laying the intention to be to defraud J. I. then and there being the treasurer of the London Dock Company. *[The 9th, 10th, 11th and 12th counts, like the first four.]*

Fourth count, for disposing of and putting away a forged order for the delivery of goods.

That A. B. late of, &c. on, &c. at, &c. aforesaid, feloniously did falsely make, forge and counterfeit, and cause and procure to be falsely made, forged and counterfeited, and willingly act and assist in the false making, forging and counterfeiting a certain acquittance and receipt for money, to wit, for the sum of three pounds and three\* shillings, in the words, letters and figures following, that is to say, "August the 26th, 1781,

On 2 Geo. II. c. 25 and 45 Geo. III. c. 89. for forging and publishing a receipt for payment of money.

(u) [\*1077] First count for forging.

(u) See similar precedents, Cro. the offence, &c. see ante 1022 to C. C. 225. Starkie, 495. As to 1044.

Second  
count for  
uttering.

received of Mr. J. B. for Moustone Quarry, the full sum of three pounds three shillings, received by me, T. F." with intention to defraud T. B. of, &c. against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said J. B. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, a certain false, forged and counterfeited acquittance and receipt for money, to wit, for the sum of three pounds and three shillings, feloniously did utter and publish as true, which said last mentioned false, forged and counterfeited acquittance and receipt is in these words, letters and figures following, that is to say, [*here set out the receipt again,*] with intention to defraud the said T. B. of, &c. aforesaid, he the said J. B. at the time when he so uttered and published the said last mentioned false, forged and counterfeit acquittance and receipt well knowing the same acquittance and receipt so by him uttered and published, to be false, forged and counterfeited, against the form of the statute, &c. and against the peace, &c.

For forging a receipt of the sun fire office society.  
(w)  
First  
count for  
forging  
with in-  
tent to de-  
fraud R.  
S. the a-  
gent to  
the socie-  
ty.

[\*1078]

That on, &c. there was and ever since hath been and now is a certain society, corporation and company of persons during all the time aforesaid, known by the name of the Society of the Sun Fire Office, in London, and that the said society during all the time aforesaid, were and are a certain company and corporation of persons associated together in co-partnership, for the purpose of insuring houses, and other buildings, goods, wares and merchandizes from loss and damage by fire, upon certain terms and conditions agreed upon between the said society and the persons making such insurances, and in consideration of certain sums of money paid by persons making and continuing such insurances to the said society as premiums or rewards for such insurances, to wit, at Reading in the said county of Berks; and that on, &c. one R. B. of Reading aforesaid, grocer, had caused the household goods and furniture of him the said R. B. in his then and now dwelling-house, situate in Reading aforesaid, to be insured by the said society from loss or damage by fire, not exceeding the sum of one hundred pounds, the utensils and stock of the said R. B. therein and in the warehouse under the same roof to be insured by the said society from loss or damage by fire, not exceeding the sum of seventeen hundred and seventy pounds, and three tenements of the said R. B. adjoining, in Reading aforesaid, then in the tenure of H. C. and others, labourers,\* to be insured by the said society from loss or damage by fire, not exceeding the sum of one hun-

(w) On 2. Geo. II. c. 25. extended to corporations by 31 Geo. I. c. 21. s. 78. and re-enacted by

45 Geo. III. c. 89. See similar precedents, Cro. C. A. 274. Starke, 498.

dred and thirty pounds, upon certain terms and conditions then agreed upon between the said R. B. and the said society, to wit, at, &c. aforesaid ; and the jurors aforesaid, upon their oath aforesaid, do further present, that R. S. late of, &c. and for six months and more before that time, and continually from thence until the day of the taking of this inquisition, was an agent of the said society, intrusted by the said society to receive for the use of the said society, monies paid to the said R. S. as an agent of the said society, for the use of the said society as and for premiums and rewards for such insurances made and continued by the said society, to wit, at, &c. aforesaid. And the jurors, &c. do further present, that W. H. late of Reading aforesaid, gentleman, on the said second day of October, in the twenty-first year aforesaid, well knowing the premises with force and arms, at Reading aforesaid, in the said county of Berks, did falsely make, forge and counterfeit and feloniously did cause and procure to be falsely made, forged and counterfeited, and feloniously did willingly act and assist in the false making, forging and counterfeiting a certain receipt for money, purporting to be a receipt given to the said R. B. for the sum of three pounds and eighteen shillings, received from the said R. B. for the use of the said society by the said R. S. as the agent of the said society, as and for a premium and reward paid by the said R. B. to the said R. S. as the agent of the said society for the use of the said society, for the continuance of the said insurance made by the said R. B. as aforesaid, for one year, from, &c. until the twenty-ninth day of September, in the year of our Lord one thousand seven hundred and eighty-two, which said false, forged and counterfeit receipt for money, so falsely made, forged and counterfeited as aforesaid, is in the words, letters, figures and cyphers following, to wit, " Pol. N. 374. 382. at 3*l*. 18*s*. per annum, rect. No. 47,230. Received of Mr. R. B. the sum of three pounds eighteen shillings, for one year's insurance in the Sun Fire Office, London, from Michaelmas last to Michaelmas next, by us the members of the said office, the second day of October, 1781. H. P. F. P., witness, R. S." and which said false, forged and counterfeited receipt for money, in the said words, letters, figures and cyphers at the time of falsely making, forging and counterfeiting the same, did and still doth import and signify, that the said R. S. had on the said, &c. received as the agent of the said society for the use of the said society, the sum of three pounds and eighteen shillings from the said R. B., as a premium and reward for the continuance of the said insurance so made by the said R. B. as aforesaid, for one year, from the said,\* &c. until the said twenty-ninth day of September, in the said year of our Lord one thousand seven hundred and eighty-two, with intent to defraud the said R. S. against the form

[\*1079]

of the statute, &c. and against the peace, &c. [*Second count, for uttering and publishing with a like intent. Third count like the first, for forging with intent to defraud R. B. the person from whom the prisoner received the money. Fourth count like the second, laying the intent as in the third.*]

For altering a receipt given by one of the clerks of the bank of England for a bank note received by him on behalf of the governor and company from the corporation of the London Assurance. (x)

[\*1080]

That J. H. late of, &c. on, &c. having in his custody and possession a certain accountable receipt for bank notes for payment of money given on, &c. J. C. who then was, and still is, a clerk of the governor and company of the bank of England for, and on behalf of the said governor and company, to a certain corporation called the London Assurance, for divers bank notes then received by him the said J. C. from the said corporation called the London Assurance, for the said governor and company (the said last mentioned bank notes being notes for payment of money, to wit, for the payment of the sum of two hundred and ten pounds,) which said accountable receipt for bank notes, for payment of money was then in the words, letters, figures and cypher following, that is to say, "1777, June 16, bank notes, C. 210l." which said last mentioned figures and cypher 210, did import, signify, and express two hundred and ten pounds, he the said J. H. on, &c. with force and arms, at, &c. aforesaid, feloniously did falsely alter, and feloniously did cause and procure to be falsely altered, and feloniously did willingly act and assist in the false altering the principal sum of the said accountable receipt for the last mentioned bank notes, for payment of money, to wit, the said sum of two hundred and ten pounds, by feloniously and falsely making, forging, counterfeiting and\* prefixing, and feloniously causing and procuring to be falsely made, forged, counterfeited and prefixed, and feloniously and willingly acting and assisting in the false making, forging, counterfeiting and prefixing the figure 3 to the said figures and cypher 210. whereby the words, letters, figures and cypher

(x) This was the indictment against Harrison, the first four counts of which are inserted in Cro. C. A. 280. See Starkie 500. It originally consisted of twenty-four counts: the two first on 2 Geo. II. c. 25. and 31 Geo. II. c. 22. s. 78. charging the prisoner with forging a receipt for money; the third and fourth are given above—four others charged the intent to the governor and company of the bank—four with intent to defraud the London assurance, and twelve others corresponding with the twelve first, only omitting the year "1777" in the recital of the bill. The defendant was ac-

quitted on all the counts charging him on 2 Geo. II. c. 25. with the forgery of a receipt for money or goods, on the ground that bank notes are neither; and convicted on the counts on 7 Geo. II. c. 22. The court were clearly of opinion that the instrument was an accountable receipt for payment of money under that act, but as that statute was not then extended to corporations, the prisoner received a pardon. This was however, remedied by 18 Geo. III. c. 18. and the 45 Geo. III. c. 39. extends to this case among many others when it re-enacts former provisions.

"1777, June 16, bank notes C. 210/." together with the figure 3 so falsely made, forged, counterfeited and prefixed as aforesaid, then did, and still do import, signify and express that the said J. C. as clerk of the said governor and company of the bank of E. had, on the said, &c. in the said, &c. received of the said corporation, called The London Assurance, bank notes, for payment of money to the amount of the sum of three thousand two hundred and ten pounds, with intention to defraud the said corporation called The London Assurance, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, That the said J. H. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, feloniously did utter and publish as true, a certain other false, altered, forged and counterfeited, accountable receipt for bank notes, for payment of money, which said last mentioned false, altered and forged accountable receipt for bank notes, for payment of money was, and is, in the words, letters, figures and cypher following, to wit, "1777, June 16, bank notes, C. 3210/." and which said last mentioned false, altered and forged accountable receipt in the said words, letters, figures and cypher last mentioned, then did, and still doth, import, signify and express that the said J. C. as clerk of the said governor and company of the bank of E. had, on the said, &c. received from the said corporation, called the London Assurance, divers bank notes for the payment of money to the amount of the sum of three thousand two hundred and ten pounds, with intention to defraud the said corporation called the London Assurance, (he the said J. H. at the time he so as aforesaid uttered and published as true, the said last mentioned, false, altered, forged and counterfeited accountable receipt for bank notes, for payment of money, well knowing the same to be false, altered, forged and counterfeited,) against the form of the statute, &c. and against the peace, &c.

Second  
count for  
uttering,  
&c. with a  
like inten-  
tion.

## FALSE PERSONATING.

### PRELIMINARY NOTES.

*The\* Offence* of false personating, which is punishable [\*1081] under several statutes, is nearly allied to forgery. At com-  
mon law, it was, at all events, indictable only as a cheat, and punishable as a misdemeanour. Indeed, most of the cases in which it has been holden to be indictable, have been those, in which conspiracy formed the principal ingredient. Thus, where it was holden criminal for two persons to marry under

Offence.

feigned names, for the purpose of raising a specious title to an estate, the conspiracy between them was the gist of the charge, 1 Leach, 37. So that at the present day, the simple offence of personating another with intent to defraud, rests chiefly on legislative provision.

The personating of bail, which seems an offence against public justice, has been provided against by 21 Jac. 1. c. 26. s. 2. and 4 and 5 W. and M. c. 4. s. 4. The first of these statutes makes it felony without benefit of clergy "to acknowledge or procure to be acknowledged, any fine, recovery, deed enrolled, statute, recognizance, bail, or judgment, in the name or names of any person or persons, not privy or consenting to the same," with a proviso, that the act shall not extend to any judgment acknowledged by any attorney of record, for any person, against whom any such judgment shall be given. But this act extended only to bail taken in the courts themselves, 4 Bla. Com. 128. so that if the bail acknowledged in another's name, was not filed, the offence was a misdemeanour only. And, therefore, the 4 and 5 W. and M. c. 4. which authorizes bail to be taken by commissioners in the county, and by any judge on his circuit, makes it a single felony for any one, before a person empowered by virtue of that act to take bail "to represent or personate any other person, whereby the person so represented and personated, may be liable to the payment of any sum of money, for debt or damages to be recovered in the same suit or action, wherein such person is represented and personated, as if he had really acknowledged or entered into the same." And the 27 Geo. III. c. 43. extends the same provision to the taking special bail in Chester. Still, however, the mere personating bail before a judge, in Chambers, which is not filed of record, appears\* to be a misdemeanour only, 1 Hale, 696. 2 Sid. 90. And if bail be put in under feigned names, there being no such persons to be defrauded, it is no felony, though the defendants may be sentenced to the pillory, or such lighter punishment as the court may think proper to inflict, 1 Stra. 384.

[\*1082]

The case of personating the proprietors of the stock of the bank or other public companies, is provided for by the several statutes which protect its transfer from forgery. Of this kind are 8 Geo. I. c. 22. s. 1. 31 Geo. II. c. 22. s. 77. and 4 Geo. III. c. 25. s. 15. which we have noticed already, [ante 1023, 4.] For the terms of these statutes it will appear that it is not necessary to constitute the offence that the fraud should be completed. Thus by 31 Geo. II. c. 22. s. 77. which we have seen extends not only to companies already established, but to all the legislature might in future sanction. It is made felony without benefit of clergy, "falsely and de-



ceitfully to personate any true and real proprietors of the said shares, in stock annuities and dividends, or any of them, or any part thereof, and thereby transferring or endeavouring to transfer the stock, or receiving, or endeavouring to receive the money of such true and lawful proprietor, as if such offender were the true and lawful owner thereof." As to what, under this act, shall be considered as an endeavouring to receive the money of a proprietor of stock, it has been holden that if a defendant personate a proprietor of stock, and having in his name procured a dividend warrant, his offence is complete, though he never made any further attempt to obtain the money on the instrument so obtained, but was apprehended in another part of the bank, before he had taken any further steps to execute his design, 1 Leach, 434.

We have seen the regulations made respecting the forgery of documents relative to seamen, for the purpose of obtaining their prize money or wages, ante 1030. And by 31 Geo. II. c. 10. s. 24. it is enacted, that "whosoever willingly and knowingly shall personate or falsely assume the name or character of, or procure any other to personate or falsely to assume the name or character of any officer, seaman, or other person entitled, or supposed to be entitled to any wages, pay, or other allowances of money, or prize money for service done on board of any ship or vessel of his majesty, his heirs, or successors; or the executor or administrator, wife, relation, or creditor, of any such officer or seaman, or other person, in order to receive any wages, pay, or other allowances of money, or prize money, due or supposed to be due or payable, for, or on account of, the services of any such officer or seaman, or other person as aforesaid, he shall be guilty of felony without benefit of clergy. And by 3 Geo. III. c. 16. s. 6.\* "Whosoever willingly and knowingly shall personate or falsely assume the name or character of, or procure any other to personate or falsely assume the name or character of any person entitled, or supposed to be entitled as an out pensioner to any out pension or allowance of money from the commissioners or governors of Greenwich Hospital, in order to receive the money due, or supposed to be due on such out-pension," shall be guilty of felony, without benefit of clergy. But it has been holden, that to constitute an offence within these acts, the personation must be as of some seaman actually on board the vessel, to which the imposter professes to belong, or of some person who is shown to be in existence, and to have some colorable claim to receive the money, and not a representation of a person altogether fictitious, 2 East, P. C. 1007. [#1083]

## INDICTMENTS FOR PERSONATING. DECEIT.

For feloniously personating another person and becoming bail in his name before a commissioner appointed to take bail in the country in matters arising in K. B. (y)

[\*1084]

That on, &c. our said lord the king, by his writ of capias, issued out of the court of our said lord the king of the common bench at W. bearing date the same day and year, directed to the sheriff N. did command the said sheriff that he should take J. R. late of, &c. yeoman, and J. D. if they should be found in his bailiwick, and them safely keep, so that he might have their bodies before the justices of our said lord the king at W. in three weeks from the day of St. Michael, to answer to D. D. of a plea that he render to him fifty pounds, which he owed to, and unjustly detained from him, which same writ afterwards, and before the delivery thereof to the said sheriff of the said county of N. to be executed on, &c. at, &c. was duly marked and indorsed for bail, for the sum of ———/ according to the form of the statute in such case made and provided, and afterwards and before the return of the same, to wit, on, &c. at, &c. was delivered to A. S. esquire,\* then sheriff of the county aforesaid, in due form of law to be executed, which said A. S. sheriff of the county aforesaid, by virtue of the writ aforesaid, afterwards and before the return of the said writ, to wit, on the said, &c. did make a certain warrant of him the said sheriff, under his seal directed to S. C. and R. R. his bailiffs of the hundred of ——— in the county aforesaid by which he commanded them jointly and severally, that they should take the said J. R. in the writ above named, to answer the said D. D. of a plea, that he render to him fifty pounds, which he owed to, and unjustly detained from him as aforesaid, and that the said S. C. in the warrant aforesaid named, afterwards and before the return of the said writ, to wit, on, &c. by virtue of the writ and warrant aforesaid, at, &c. aforesaid, did take and arrest the said J. R. in the said writ and warrant above named, according to the command of the writ and warrant aforesaid, and him the said J. R. then and there had in his custody by virtue of the said writ and warrant aforesaid, and

(y) See a similar precedent, Cro. C. C. 89. Starkie, 505. This indictment is founded on 4 W. & M. c. 4. s. 4. which enacts, "That, if any person shall (before any person empowered by virtue of that act to take bail or bails) represent or personate any other person, whereby the person so represented and personated may be liable to the payment of any sum

or sums of money for debt or damages to be recovered in the same suit or action, wherein such person is represented and personated, as if he had really acknowledged and entered into the same, "shall be esteemed a felon," &c. and see 27 Geo. III. c. 43. respecting special bail at Chester, 1018.

that J. M. late of, &c. contriving and intending to prejudice and bring one C. G. to great expences, and unlawfully to subject him the said C. G. to the payment of a great sum of money, afterwards, to wit, on the said, &c. at, &c. aforesaid, in his own proper person came before J. F. gentleman, and then and there, with force and arms, feloniously did represent and personate the person of the said C. G. of, &c. yeoman, and in the name and by the addition of him the said C. G. did become bail for the said J. R. in a certain recognizance taken before the said J. F. in the action aforesaid, (he the said J. F. then and there having full and lawful power and authority, by virtue of a commission under the seal of the said court of the common bench, to take a recognisance in that behalf, in the said county of N. according to the form of the statute in such case made and provided, by which said recognizance he the said J. M. (by feloniously representing and personating the person of the said C. G.) in the name and by the addition of him the said C. G. as aforesaid, before the said J. F. then and there feloniously and unlawfully did acknowledge to owe to the said D. D. the sum of fifty pounds, to be levied upon the goods and chattels, lands and tenements of him the said C. G. upon condition that if the said J. R. should be condemned in the said action he the said J. R. should pay the condemnation money, or render himself into the Fleet for the same, or if he failed so to do, he the said C. G. (meaning the said C. G. of —, in the county of N. aforesaid, yeoman, so represented and personated by the said J. M. as aforesaid) did undertake to do it for him, (meaning the said J. R.) whereby he the said C. G. so represented and personated as aforesaid, might have been liable to\* the payment of the said sum of fifty pounds to be recovered in the same action, as if he had really himself acknowledged and entered into the said recognizance, against the form of the statute, &c. and against the peace, &c. [\*1085]

That M. G. late of, &c. on, &c. was possessed of, and entitled unto a certain transferable share, to wit, of and in a capital stock of annuities established by certain acts of parliament, that is to say, by an act of parliament made in the twenty-fifth year of the reign of his late majesty king George the Second, entitled, &c. *[here set forth the titles of the following acts of parliament, 25 Geo. II. c. 27. 28 Geo. II. c. 15. 29 Geo. II. c. 11. 31 Geo. II. c. 22. 32 Geo. II. c. 22. 33 Geo. II. c. 12. 1 Geo. III. c. 7. 6 Geo. III. c. 31. 7 Geo. III. c. 24. 8 Geo. III. c. 31. 10 Geo. III. c. 36. 16 Geo. III. c. 14. 18 Geo. III. c. 22. 19 Geo. III. c. 18. 21 Geo. III. c. 21.]* For personating the proprietor of 100l. consolidated bank annuities and transferring the same. (z)

(z) See a similar precedent, 4 dictment, 1 Leach, 434, ff. Wentw. 55. and abstract of an in-

14. *and all other bank annuity acts, down to the time of the offence,]* the proprietors of which said annuities so established as aforesaid, then, to wit, on, &c. had in respect of the said annuities, transferable shares in the said capital stock of the said annuities, in proportion to their respective annuities, to wit, &c. aforesaid, and that he the said M. G. on the said, &c. was the true and real proprietor of a share in the said annuities, and in respect thereof, then and there had the said transferring share above mentioned, of and in the said capital stock of the said annuities. And the jurors, &c. further present, that H. B. late of, &c. well knowing the premises, but wickedly devising and intending the governor and company of the bank of E. to defraud, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, falsely, deceitfully and feloniously did personate the said M. G. the true and real proprietor of the said one hundred pounds share of and in the said capital stock of the said annuities, and thereby did then and there feloniously transfer the said one hundred pounds share of the said M. G. of and in the said capital stock of the said annuities, unto one R. B. as if he the said R. B. then was the true and lawful owner of the said one hundred pounds share of and in the said capital stock of the said annuities, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said M. G. on, &c. was possessed of and entitled to a share, to wit, one hundred pounds share of and in certain transferable annuities, established by certain other acts of parliament, made in the twenty-fifth year, &c. [*set forth all the acts of parliament, as in the first count,*] and\* that the said M. G. on the said, &c. was the true and real proprietor of the said one hundred pounds share, of and in the said last mentioned annuities. And the jurors, &c. do further present, that the said H. B. well knowing the premises, but wickedly devising and intending the governor and company of the bank of E. to deceive and defraud, to wit, on the said, &c. with force and arms, at, &c. aforesaid, falsely, deceitfully and feloniously did personate the said M. G. the true and real proprietor of the said one hundred pounds share of and in the said last mentioned annuities, and thereby did then and there feloniously transfer the said one hundred pounds share of the said M. G. of and in the said last mentioned annuities, unto one R. B. as if he the said R. B. then was the true and real proprietor of the said one hundred pounds share, of and in the said annuities, against the form of the statutes, &c. and against the peace, &c. And the jurors, &c. further present, that the said M. G. on the said, &c. was possessed of, and entitled to a certain other share, to wit, one hundred pounds share of and in certain annuities in

Second  
count.

respect of which the proprietor of the said last mentioned annuities then had transferable shares, of and in the said capital stock of annuities established by certain other acts of parliament, that is to say, by, &c. [*set forth all the acts as above*] in proportion to their respective annuities, and that he the said M. G. &c. [*as in last count,*] against the form of the statute, &c. and against the peace, &c.

## INDICTMENTS FOR KILLING, WOUNDING AND POISONING ANIMALS.

That A. H. late of, &c. being an ill designing and disorderly person, and of a wicked and malicious mind, after the first day of June,\* in the year of our lord one thousand seven hundred and twenty-three, to wit, on, &c. with force and arms, at, &c. one black gelding of the price of fourteen pounds, of the goods and chattels of one J. J. in a certain field belonging to him the said J. J. then and there being, feloniously, unlawfully, wilfully and maliciously then and there did kill and destroy, to the great damage of him the said J. J. against the form of the statute, &c. and against the peace, &c.

For a capital felony, on 9 Geo. I. c. 22. in maliciously killing a gelding.  
(a) [\*1087]

That P. C. late of, &c. being an ill-designing and disorderly person, and of a wicked and malicious mind and disposition, after the first day of June, in the year of our lord one thousand seven hundred and twenty-three, to wit, &c. with force and arms, at, &c. aforesaid, one cow of the price of seven pounds, of the goods and chattels of C. J. in a certain

For a capital felony on 9 Geo. I. c. 22. for ma-

(a) See other precedents post 1087, 8. 2 Bla. Rep. 721. Cro. C. C. 83.4. Starkie, 553, 4. A precedent for killing a mare; first count for killing, Second count for maiming third count for killing a gelding. 6 Wentw. 372. This offence is founded on 9 Geo. I. c. 22. commonly called the Black Act, which we have already had occasion to notice so frequently. The clause which relates to it makes it felony without benefit of clergy to unlawfully and maliciously "kill, maim, or wound, any cattle." Within the term *cattle* in this act horses are included, and need not in the indictment be specially averred to be cattle, 2 Bla. Rep. 721. But to bring the case within the statute, the offender must be actuated by malice against the owner of the animal killed or maimed, and not merely against the animal itself. And therefore if a per-

son wound an animal belonging to another from the sudden impulse of passion towards it, it has been held that he is not within the act, 1 Leach 527. and in notes. But it is not necessary to give evidence of express malice against the owner which will be presumed until the contrary appears 2 East, P. C. 1074. And in Dawson's case, who was indicted for poisoning horses in order to prevent them from running the race, defendant having betted against them it was holden that this intent was sufficient to bring the case within the act, and the defendant was convicted M. S. S. See the indictment post. If however, it appears on the evidence that the defendant was a servant to the prosecutor, and, in irritation because his master would not let him have another horse to drive in a team, he committed the injury on the horse which he desir-

liciously  
maiming a  
cow. (b)

[\*1088]

On the  
same act  
for maim-  
ing a geld-  
ing in a  
field in  
another  
form. (c)

On the  
same act  
for poison-  
ing a mare.  
(d)

barton belonging to him the said C. J. then and there being, feloniously, unlawfully, wilfully and maliciously, then and there did maim and wound, to the great damage of the said C. J. against the form of the statute, &c. and against the peace, &c.

That A. B. late of, &c. on, &c. at, &c. aforesaid, in a certain open\* piece or parcel of ground, there called the Marsh, with a certain sharp instrument called a bill-hook, made of iron and steel, of the value of two shillings, which he the said J. B. in his right hand then and there had and held, feloniously, unlawfully, wilfully and maliciously did strike a certain black gelding, then being of the price of twenty pounds, in and upon the left shoulder of the said gelding, (the same then and there being the property of some person or persons, to the jurors aforesaid as yet unknown) giving to the said gelding, then and there, by such striking as aforesaid, in and upon the said left shoulder of the said gelding, one deep wound of the breadth of five inches, and of the depth of four inches, and thereby did then and there feloniously, unlawfully, wilfully and maliciously maim and wound the said gelding, against the form of the statute, &c. and against the peace, &c.

That D. D. late of, &c. being an ill designing and disorderly person, and of a wicked and malicious mind, after the first day of June, in the year of our lord one thousand seven hundred and twenty-three, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, one mare of great value, to wit, of the value of 20/. of the goods and chattels of one W. A. there and then being, feloniously, unlawfully, wilfully and maliciously then and there did kill and destroy, by having before then, (that is to say) on, &c. aforesaid, in the said, &c.

ed to have exchanged, he will not be deemed within the act. 1 Leach, 539. Nor will a man who maims sheep, to prevent their trespassing on an inclosure id. ibid. in notis. To bring the case within this act it is not necessary that the cattle should die in consequence of the maiming; nor is it even essential that the injury done to them should be permanent id. ibid. in notis. It has been holden that aiders and abettors are, under this act excluded from clergy as well as principals in the first degree, though they are not specifically named. But as the contrary opinion is strenuously maintained by Mr. Justice Foster, whose knowledge of criminal law renders his

opinion of great weight, the point is at least doubtful. See the case of Midwinter and Sims, with Mr. J. Foster's argument *Fost.* 415 to 430. 1 Leach, 66. 7 in notis.—*Indictment.* The venue may be laid in any county, 2 Bla. Rep. 733. It is not necessary to aver that the animals are cattle in order to bring them within the statute, id. ibid.

(b) See a similar precedent *Cro. C. C.* 83. Starkie, 554.

(c) See similar precedents *Cro. C. C.* 84. *Cro. C. A.* 26 Starkie, 554.

(d) This was the indictment against Dawson for placing poison in horse troughs, on which he was convicted and executed, ante 1087.



wilfully, maliciously and unlawfully put and infused into, and mixed with certain water then and there being in a certain trough, in, &c. aforesaid, used for the purpose of watering horses, and at which said trough the said mare of the said W. A. was usually watered, a certain quantity of deadly poison, to wit, white arsenic, and of which said water, wherein the said poison had been so put and infused, and mixed as aforesaid, the said mare of the said W. A. afterwards, to wit, on the said, &c. at, &c. aforesaid, did drink, and by reason of and in consequence thereof, the same mare then and there became and was poisoned, and afterwards, to wit, on, &c. last aforesaid, did by reason and occasion of her having been so poisoned as aforesaid, die, to wit, at, &c. aforesaid, to the great loss and damage of the said W. A. against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present that the said D. D. being such ill designing and disorderly person, and of such wicked and malicious mind as aforesaid, after the said first day of June, in the year of our Lord 1723, aforesaid, to wit, on the said, &c. at, &c. aforesaid, one mare of great\* value, to wit, of the value of twenty pounds of the goods and chattels of the said W. A. there then being, feloniously, unlawfully, wilfully, and maliciously then and there did kill and destroy, by having before then, to wit, on, &c. last aforesaid, in the said, &c. wilfully, maliciously and unlawfully put and infused into, and mixed with certain water, whereof the said mare of the said W. A. was accustomed to drink, a certain quantity of deadly poison, to wit, white arsenic, and of which said water, wherein the said poison had been so put and infused, and mixed as aforesaid, the said mare of the said W. A. afterwards to wit, on the said, &c. at, &c. aforesaid, did drink, and by reason and in consequence thereof, the same mare then and there became and was poisoned, and afterwards, to wit, on, &c. last aforesaid, by reason and on occasion of her having been so poisoned as aforesaid, did die, to wit, at, &c. aforesaid, to the great loss and damage of the said W. A. against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said D. D. being such ill designing and disorderly person, and of such wicked and malicious mind as aforesaid, after the said, &c. to wit, on the said, &c. at, &c. aforesaid, one other mare of the value of twenty pounds of the cattle goods and chattels, and property of the said W. A. there then being, feloniously, unlawfully, wilfully and maliciously then and there did kill and destroy, to wit, by then and there causing and procuring the same mare to take and swallow a certain quantity of certain deadly poison, to wit, arsenic, of which the said last mentioned mare then and here died, to the great damage of the said W. A. against

Second  
count.

[\*1089]

Third  
count.

Fourth  
count.

form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said D. D. being such ill designing and disorderly person, and of such wicked and malicious mind as aforesaid, after the said, &c. aforesaid, to wit, on the said, &c. with force and arms, at, &c. aforesaid, one other mare of the value of twenty pounds of the cattle, goods, chattels and property of the said W. A. there then being, feloniously, unlawfully, wilfully and maliciously then and there did kill and destroy, that is to say, by poison, to the great damage of him the said W. A. against the form of the statute, &c. and against the peace, &c.

## CHAPTER XVI.

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### INDICTMENTS FOR OFFENCES TO HABITATIONS AND REAL PROPERTY.

#### BURGLARY. (e)

##### PRELIMINARY NOTES.

The\* word burglary is a compound of the Saxon terms *burgh* a house, and *laron* theft ; and originally signified no more than the robbery of a dwelling. But it is now defined to be the breaking and entering the house of another in the night time with intent to commit a felony, whether the felony be actually committed or not. Jac. Dic. Burglary, 3 Inst. 63. The circumstances essential to be considered, are—in what place it must be done—at what time—by what means—and with what intention ; and these points we will separately consider.

[\*1090]  
The offence,

I. *In what place burglary may be committed.* It must, in general, be committed in a mansion house ; though the ancient books speak of it also in relation to the walls of a town, and it has always been holden, that it may take place in a church or chapel. The latter is placed by Lord Coke, on the ground that a consecrated place is the mansion house of God, 3. Inst. 64. but this idea is opposed by Hawkins, and seems to rest on very unsubstantial foundations, Hawk. b. 1.

Place in which burglary may be committed.

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(e) As to this offence in general, see 3 Inst. 63 to 66. 1 Hale 547 to 565. Hawk. b. 1. c. 38. Com. Dig. Justices P. 2. &c. Bac. Abr. Burgla-

ry. 2 East, P. C. 481 to 523. 4 Black. Com. 223 to 228. Burn, J. Burglary. Dick. J. Burglary. Jac. Dic. Burglary.

[\*1091] c. 38. s. 17. The principal question\* is, however, at the present day, what is to be deemed a *dwelling house*. And, from all the cases it appears, that it must be a place of actual *residence*. Thus a house under repair, in which no one lives, though the owner's property is deposited there, is not a place in which burglary can be committed; for it cannot be deemed his dwelling house, until he has taken possession with intent to inhabit it, 1 Leach, 185. Nor will it make any difference if one of the workmen engaged in the repairs, sleep there, in order to protect it, 1 Leach, 186, *notis*. Nor, though the house is ready for the reception of the owner, and he has sent his property into it preparatory to his own removal, will it become for this purpose, his mansion, 2 Leach, 771. So, if the landlord of a house purchase the furniture of his out going tenant, and procure a servant to sleep there, in order to guard it, but without any intention of making it his own residence, a breaking into the house will not amount to burglary, 2 Leach, 876. But if the agent of a public company reside at a warehouse belonging to his employers, this crime may be committed by breaking it, and he may be laid as the owner, 2 Leach, 931. And it seems that if a man die in his house, and his executors put servants in it, and keep them there at board wages, burglary may be committed in breaking it, and it may be laid to be the executors' property, 2 East P. C. 499.

It seems quite settled that the proprietor of the house need not be actually within it at the time the offence is committed, provided it is one of his regular places of abode. For if he leaves it *animo revertendi*, though no person resides in his absence, it will still be his mansion. As if a man has a house in town, and another in the country, and goes to the latter in the summer, the nocturnal breaking into either with a felonious design, will be burglarious, Fost. 77. But if the occupier of a house removes from it with his whole family, and takes away so much of his goods as to leave nothing fit for the accommodation of inmates, and has no settled idea of returning to it, but rather intends to let it, the offence will be merely larceny, Fost. 76. And the mere casual use of a tenement will not suffice; and, therefore, the circumstance of a servant sleeping in a barn, or porter in a warehouse, for particular and temporary purposes, will not so operate as to make a violent entry in the night, in order to steal, a burglary, 1 Hale, 557, 8.

"Every house for the dwelling and habitation of man," observes lord Coke, "is taken to be a mansion house, wherein burglary may be committed," 3 Inst. 64. So even a loft, or a stable used for the abode of a coachman, which he rents for his own use and that of his family, is a place which

may be burglariously broken,\* 1 Leach, 305. So also bur- [\*1092]  
 glary may be committed in a lodging room, 1 Leach, 89. or  
 in a garret used for a workshop, and rented together with an  
 apartment for sleeping, and if the landlord does not sleep  
 under the same roof, the place may be made as the mansion  
 of the lodger, 1 Leach, 237. So to this purpose chambers in  
 a college or inn of court, where each individual has a dis-  
 tinct property, are considered as separate mansions, though  
 under the same roof, and having a common entrance, 1 Hale,  
 556. This offence may also take place by breaking open a  
 shop built close to a dwelling house, although no one sleeps  
 in it, and it has no internal communication with the princi-  
 pal mansion, 1 Leach, 357. But where a centre building is  
 allotted to a variety of trades, and there are two wings an-  
 nexed to it, both of which are used as dwelling houses, and  
 occupied by different persons, the case will be otherwise, and  
 it will be holden not a dwelling house for the purpose ; being  
 evidently a distinct tenement, and occupied jointly, while the  
 adjoining houses are the respective abodes of individuals, 2  
 Leach, 913. With respect to out houses, it is generally laid  
 down by the older writers, that barns, stables, cow houses,  
 are included in the term *domus mansionalis*, if they are parcel  
 of the messuage, though neither contiguous to it, nor under  
 the same roof, 3 Inst. 64. 1 Hale, 558. And accordingly it  
 was holden that burglary might take place in respect of a  
 building eight or nine yards distant from a dwelling house, and  
 with only a paling between them, 1 Hale, 558. But it was  
 even then laid down, that if the out house was at considera-  
 ble distance, as if it stood a bow shot from it, so as not to be  
 reasonably esteemed parcel of the principal dwelling, nor  
 within the curtilage, it will not answer to this description, 1  
 Hale, 144. And in more recent times, it has been decided  
 that an out house several feet from the mansion, and uncon-  
 nected by any common inclosure is not a place in which bur-  
 glary can be committed, 1 Leach, 144. Neither is it an of-  
 fence of this degree to break open a tent or booth erected in  
 a market or fair, though a person should choose to lodge in  
 so slight a tenement, for the law regards thus highly, none  
 but permanent and substantial habitations, 3 Inst. 64.

2dly. *At what time the offence must be committed.* It is  
 essential to the offence that it should be committed in the  
 night, and the only question is what time will be so con-  
 sidered for this purpose. Anciently the day was account-  
 ed to begin from sun-rising, and to end at sun-setting ; but  
 it is now agreed that if there be sufficient remains of day-  
 light left to discern the features of a man's face, no breaking  
 can be burglarious, 3 Inst. 63. 1 Hale, 550: 2 Leach, 710.  
 This however, does not extend to moon-light ; for, as ob-

[\*1093] served\* by Mr. Justice Blackstone, "the malignity of the offence does not so properly arise from its being done in the dark, as in the dead of night, when all the creation, except beasts of prey, are at rest; when sleep has disarmed the owner, and rendered his castle defenceless," 4 Bla. Com. 224. Both the breaking and entry must be nocturnal; for if the breaking were in the night and the entry in the day or *vice versa*, the offence would not amount to burglary, 1 Hale, 551.: but if the breaking is on one night, and the entry on another, they together amount to burglary, and it may be supposed that both took place when the entry was effected, 1 Hale, 551.

3dly. *What acts are necessary to constitute burglary.* There must be both a *breaking* and an *entry*; for the older as well as modern writers universally agree, that both are requisite, 1 Hale, 551. 3 Inst. 64.: we have, therefore, to enquire, what in law is deemed a breaking, and what an entry.

The breaking must be actual, and not arising from a mere legal construction, 1 Hale, 551.; so that an entry by an open door or window is not burglarious, though it would make the party a trespasser, if unaccompanied by a felonious design, 3 Inst. 64. The force, however, does not imply a demolition of any part of the walls, or even manual violence; for if the thief descends through a chimney, which cannot be further inclosed, this will amount to burglary, 1 Hale, 552. 4 Bla. Com. 226. And if by threats the offender compels a person to open his door, or induces him to do so to repel the violence attempted on his premises, it will amount to a burglarious breaking, 1 Hale, 553. So if admittance is obtained by fraud, as if thieves with a pretended hue and cry require a constable to go with them to search a man's house, or alledge there are traitors there, after entering bind the constable and the owner, and rob the house, this is burglary, 1 Hale, 552, 3. 2 Leach, 1064. notes. So where the defendant met a servant belonging to a house who kept the key, and by false pretences enticed him to let her in, on which she robbed the premises, the judges came to a similar decision, 2 East, P. C. 485. And it seems to be now settled, that if a servant within a house conspires with another person to let him in, in order to rob his master, both parties are guilty of burglary, 2 Stra. 881. 4 Bla. Com. 227.

It is immaterial by what kind of violence the breaking is effected. The opening a casement, breaking a window, picking the lock of the door with a false key, putting back the lock of the door, bolt, or fastening, unlatching a door which is only latched, bending aside nails, or otherwise unloosing fastenings, are all means to a burglarious entry, 1 Hale, 552.



So to push open massive doors which shut by their own weight, is burglarious, though there is no actual fastening,\* [\*1094] 2 East, P. C. 487. And it is to be observed, that even when the first entry is a mere trespass, being as *per jamua aperta*, if the thief afterwards breaks open any inner room, he will be guilty of burglary, 1 Hale, 553.: and this may be done by a servant who sleeps in an adjacent room, unlatching his master's door, and entering his apartment, with intent to kill him, 1 Hale, 554. But Lord Hale doubts whether a guest at an inn is guilty of burglary by rising in the night, opening his own door, and stealing goods from other rooms, 1 Hale, 554.: and it seems certain that breaking open a chest or trunk, is not in itself burglarious, Fost. 108, 9.: and, according to the better opinion, the same principle applies to cupboards, presses and other fixtures, which though attached to the freehold, are intended only the better to supply the place of moveable depositaries, Fost. 109.

It was anciently doubted whether the breaking might not be subsequent to the entry; as if the prisoner being in the house without violence should break it, in order to escape with his booty, 1 Hale, 554. But this difficulty is removed by 12 Ann, c. 7. which after reciting that doubts have been entertained on the subject, declares and enacts, "that if any person shall enter into the mansion or dwelling-house of another, by day or by night, without breaking the same, with an intent to commit felony; or being in such house shall commit any felony; and shall in the night time break the same house to get out of the same; such person is and shall be adjudged to be *guilty of burglary*, and shall be ousted of the benefit of clergy in the same manner as if such person had broken and entered the same house in the night time with an intent to commit felony there."

An *entry* is requisite as well as a *breaking*: for if a house be broken open, and the owner, through the fear occasioned by the circumstance, throw out his money, the burglary will not be completed, 1 Hale, 555.; but the introduction of a part of the body will suffice, Fost. 108. Thus if the prisoner breaks open a shop window, and with his hand takes out goods, the offence is complete, Fost. 107. Even the introduction of a hook with intent to steal, may amount to burglary, 3 Inst. 64. And where several having broken open a house, and attempting to enter are opposed by the owner, and in making a pass at him the hand of one of the party is within the threshold, he will be guilty of burglary, 1 Hale, 553. If, however, an instrument has been thrust into the window, not for the purpose of taking out property, but only calculated to form the aperture, this will not be regarded as an entry, 1 Leach, 406. It seems doubtful whether shooting

[\*1095] through a window is sufficient by the entry of the shot discharged ; but it seems the better\* opinion that is ; as, in this case, a felony by killing is as much attempted, as in the introduction of an instrument, a felony by stealing, 1 Hale, 555. Hawk. b. 1. c. 38. s. 7.

4thly. *What intention is necessary to constitute burglary.* No breaking and entering, though both nocturnal and violent, will be esteemed burglary unless the party intended, at the time, to commit a felony, 2 Leach, 717. For if the intent were only to commit a trespass, though it is possible death might ensue, it is not burglary ; as the felonious intention at the time of the breaking is necessary to constitute the offence, 3 Inst. 65. 1 Hale, 561. Thus if a servant entrusted by his master to sell goods, receives money to his use, conceals it in the house instead of paying it over, and, after his dismissal breaks the house and steals it, the entry is not burglarious, because there was no felony in the original taking, 1 Show. 53. And even where prisoners were proved to have broken open a house in the night time to recover teas seized for wanting a legal permit, for the use of the person from whom they were taken, an indictment for burglary with intent to steal, was holden not to be supported, 2 East, P. C. 510. But had they been charged with breaking the house for the purpose of feloniously rescuing goods seized under 19 Geo. II. c. 34. it seems that they might have been convicted ; for the intent to commit an offence made felony by statute, seems on the same level with the design to perpetrate an offence at common law ; because all the properties of a felony at common law are given to an offence when created by statute, Hawk. b. 1. c. 38. s. 38. 4 Bla. Com. 228.

Indictment.

Peculiar exactness as to *time* is required in an indictment for burglary. It is not only necessary to state a day and year, but also an hour about which the offence was committed ; in order that it may appear to the court to be at a time when there could be no day-light remaining, Waddington's case, Burn J. Burglary, ante 1 vol. 219. If this be wanting, the defendant can only be convicted of a simple larceny, Id. ibid. But it is not necessary that the evidence should correspond with the allegation either as to the day or hour, so that it shows the offence to have been committed in the time of darkness, 2 Hale, 179. ante 1 vol. 219. Both breaking and entering must be charged to have taken place in the night, or there is no charge of burglary, 1 Hale, 549.

The offence must, in general, be laid to be committed in a dwelling-house ; and, therefore, if it be stated as in a house merely, the proceedings will be defective, 1 Hale, 550. But where a church is broken, it seems more proper instead of terming it the mansion house of God, according to the fanci-

ful interpretation of Lord\* Coke, to describe it as the parish church of the parish to which it belongs, according to the truth, which will suffice, 1 Hale, 556. ante 949. and ante 1 vol. 214. When, however, the place belongs to a private individual, though it is an out house which adjoins the mansion, it must either be laid in the dwelling-house generally, or in a stable, &c. part of the dwelling-house, either of which methods may be adopted, 1 Leach, 144. 2 East P. C. 512, 3. [\*1096]

The name of the owner of the house must next be stated with such certainty to a common intent, as is, in general, necessary, in the description of the party who has sustained the injury, see 1 vol. 215, 6, 7. It becomes therefore, necessary to inquire who is, for this purpose, to be regarded as the owner; for an error on this subject, will vitiate the proceedings.

And, from a variety of cases it appears, that this point is not governed by the mere occupancy or possession. If servants or agents reside in that capacity, in the place broken, it cannot be laid as theirs. Even in a case where a farmer was the proprietor of a range of buildings, and suffered his servant to reside in a cottage, while he occupied the principal mansion, though the former received less wages, on the ground of his being permitted to reside in the cottage, it was holden that the property ought to be laid in the master, because the circumstances did not amount to a letting, but only a permission of residence, 2 Leach, 1018. 16 East, 39. Lit. Rep. 139. So if the servant of a banker is suffered to sleep in a room over the shop, though his salary is diminished on that account, and he has a separate outer door leading to his apartment, the house must be laid to be the house of the master, even though he never sleep there, because there was no actual demise to the servant, 2 Leach, 1015. 2 Taunt. 339. On the same principle, if the chamber of a guest at an inn is forced open, and his goods stolen, the burglary must be laid in the dwelling house of the landlord, 2 East, P. C. 502. So where part of a family reside in a dwelling house, it must be laid as the mansion of the principal. For even when a married woman lives separate from her husband, and the wife alone has taken a lease of the premises, they must be described as his dwelling; though, of course, it would be otherwise in a case where the law would adjudge it to be the sole property of the woman, and she enjoys exclusive possession, Kel. 43. 11 East, 301. In case of persons employed by the crown or public companies, the same rule prevails. If burglary is committed in the invalid office at Chelsea—in Somerset house—in Whitehall—in any of the public offices or royal palaces—the mansion must be laid as the king's, 1 Leach, 324. and in notis. The same principle applies

[\*1097] to corporations ; for if a burglary be laid to be in the dwelling\* house of one of the officers belonging to the African company, it will be bad, although a corporation cannot be resident, 1 Leach, 324. in notis. But it has been holden that if the agent of a trading company resides in the house of his employers in town, it may properly be laid as his dwelling, 2 Leach, 930. So a city hall may be described as the residence of the clerk to the company to whom it belongs, id. ibid. in notis. The ground for these two last decisions is stated to be that the punishment of burglary was intended to protect the actual occupant from the terror of disturbance during the hours of darkness and repose, but it would be absurd to suppose that that terror which is of the essence of the crime, could, from a breaking and entry in one place, produce an effect in another, 2 Leach, 931.

In many cases, a difficulty arises from the circumstance of the same edifice being inhabited by distinct families. In some cases, it is clear that the portions form distinct dwellings. Thus chambers in inns of court are all considered in law as separate habitations, and have incident to them the privileges of individual dwellings. 1 Hale, 556. And if, by an actual severance, all internal communication is cut off, the partitions become distinct houses ; so that if one house is divided to accommodate the families of two partners, though the rent and taxes of the whole are paid out of one common fund, each part will be regarded as a mansion. 1 Leach, 537. and see Salk. 532. It seems also formerly to have been thought, that a lodger taking an apartment for a certain time had such an interest in it, that in case it were broken it might be laid as his dwelling, 1 Hale, 556, Hawk. b. 1, c. 38. s. 13, 4. But now it seems to be settled that if the proprietor resides in the house, the property must be laid in him. Kel. 84. 4 Bla. Com. 225. Unless indeed there be a severance between the apartments he lets and those in which he resides, and distinct entrances to both of them. If, on the other hand, the landlord does not live in the house, but either lets a part or the whole of it to lodgers, each room occupied by an individual is regarded as his mansion. 1 Leach, 89, 237. 437. Nor will it alter the case if he has retained a part of the premises for his own use, so long as he does not make it his abode. 1 Leach, 89. If, however, a part of the house be severed by lease, the property must be laid not in the lessor but the lessee ; and if no one sleeps in it after the severance, it will not be the subject of burglary. 1 Hale, 557, 8. Kel. 83, 4.

The proper person being thus ascertained, it must be accurately stated in the proceedings. For any material variance in the evidence from the statement, will be fatal. 1 Leach, 252,

2 Leach, 774. Thus where a person was indicted for burglary in the house of Sarah\* *Lunns*, and her name appeared to be *London*, he was acquitted of the capital part of the charge. 1 Leach, 253. in notis; and though it is said to be doubtful whether the leaving a blank for the surname would not be vicious, 1 Hale, 558. Moore, 466. there can be little doubt that at the present day such an omission would be material. [\*1098]

The words, "broke and entered" must both be inserted; as we have seen that both of them are essential to constitute the offence. 1 Hale, 550. The word *burglariously* is necessary, 4 Co. 39, 40. and "*feloniously*" is also requisite as in other felonies.

The charge is not complete without an averment of a felonious intention, or the actual commission of a substantive felony. 1 Hale, 559. 2 Leach, 717. We have seen an intent to commit a trespass is not sufficient, even though a felony might be its probable consequence, 1 Hale, 561. 3 Inst. 65. And the intent must be correctly stated; for if it be charged that the defendant intended to commit one species of felony, and it is proved that he designed another, the indictment will be vicious. 1 Hale, 561. Thus if an actual larceny is averred, and it is proved that the theft was not complete the defendants must be acquitted. 2 Leach, 708. Nor can a previous stealing in the same house be connected with a subsequent breaking so as to support this charge. *id. ibid.* On the other hand, if a felony has been actually committed, an averment of the intent to commit it will suffice. 1 Hale, 560. Where any doubt exists as to what specific felony was designed, the intention should be laid differently in distinct counts, in order to correspond with the evidence; and though it was once objected that this course would perplex the prisoner in his defence, it has expressly been holden proper. 2 East, P. C. 515. When the indictment states a burglarious entry and an actual felony afterwards, it contains two charges which may be severed by the verdict—the burglary and the felony; and if the former should not be proved, the defendant might yet be found guilty of the latter. 1 Hale, 559. But on such an indictment, if the stealing itself were left unproved, and the burglarious entry with intent to steal were shewn, the defendant must be entirely acquitted; because the actual felony being done away no other intent, independent from it, appears on the record. 2 Leach, 708. Lord Hale, therefore, advises that the indictment should charge a burglarious entry with intent to steal; and then an actual burglarious stealing (*f*) as if

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(*f*) See the form post.

[\*1099] no intent had been previously alleged; on which if the theft be unsupported, the defendant may be still be convicted on his evil intention. 1 Hale, 560. and see form Cro. C. C. 7th\* Ed. 233, 8th Ed. 87. post 1100. 2 East, P. C. 513 to 520. He thinks also, that the same indictment may charge a burglarious entry with intent to steal—an actual stealing—and a capital felony within 5 and 6 Edw. VI. c. 9. for stealing in a dwelling house to the value of forty shillings, the owner or some of his family being therein, whether waking or sleeping. 1 Hale, 560. So that the defendant may be convicted of burglary with actual stealing—of burglary with intent to steal—of capital felony under the statute—or of a simple larceny, according to the evidence. Such an indictment does not need a conclusion contrary to the statute; as the three capital offences are not created, but only deprived of clergy by legislative provision. If the defendant be acquitted of the burglary, on the ground that it was not complete, an indictment for a misdemeanour in attempting it may be preferred against him. 1 Leach, 406.

Plea.

*Plea.*—If the defendants are indicted for burglary and an actual stealing, and, on the trial, a mere attempt to steal is proved in evidence, on which ground they are acquitted, they may be indicted again, and the plea of *autrefois acquit* will not avail them. 2 Leach, 716. For though the breaking and entering the house is essential alike to both species of this offence, they are not sufficient to fix the guilt on the prisoner; so that, in their essence, the charges are entirely distinct; the evidence which supports one will not sustain the other; and therefore an acquittal of one will not bar a prosecution for the other. For the general principle applicable to this case is, that unless the first indictment can be supported by proof of the facts contained in the second, the plea will be of no avail. 2 Leach, 720.

Verdict.

*Verdict.*—We have seen that, where a larceny, either simple or made capital by statute, is charged together with a burglary, the defendant may be convicted of the less aggravated offence and acquitted of the higher. And, if convicted of stealing in a dwelling house to the value of forty shillings, he will be excluded from clergy, though that offence is not stated distinctly and separately in any count of the proceedings against him. 1 Leach, 88. In this case, the proper way to take the verdict is, “not guilty of the breaking and entering the dwelling house in the night, but guilty of stealing, &c. (the articles in question) from the dwelling house.” 1 Leach, 88. 2 East, P. C. 518, though it seems that an entry “not guilty of the burglary, but guilty of stealing above the value of forty shillings in the dwelling house,” is sufficient to warrant sentence of death on the convict. 2 East, P. C. 518. It has been decided, however, that



where several are joined in the same indictment for burglary and felony they cannot, on the same evidence, be found guilty in different\* degrees, since that circumstance would shew that they ought never to have been joined in the same proceedings. 2 Harg. St. Tr. 526. 1 Sid. 171. [\*1100]

*Punishment.*—Burglary was a felony by the common law, 3 Inst. 63. Clergy was taken away from those who were guilty of it by 1 Edw. VI. c. 12. s. 10. when any person was within the house and put in fear. By the 18 Eliz. c. 6. all persons guilty of burglary, generally found guilty, outlawed, or confessing were excluded from clergy. And the 3 W. and M. c. 9. s. 2. extended this regulation to parties standing mute, challenging preemptorily more than twenty and refusing to answer directly, as well as all accessaries before the fact. The 5 Ann, c. 31. s. 5. excluded from clergy all accessaries after who should knowingly receive the principal felon. So that at the present day, all principals and accessaries in burglary are liable to capital punishment, by whatever mode they may be convicted. Punishment.

*Rewards.*—By 5 Ann, c. 31. s. 1. forty pounds are given to the party apprehending a burglar and prosecuting him to conviction. And in addition to this the 10 W. III. c. 23. gives him a certificate or Tyburn Ticket, exempting him from all parochial offices. Rewards.

## INDICTMENTS FOR BURGLARY.

[Commencement as ante, second vol. 1, 2, 3.] That A. B. late of, &c. on, &c. (*h*) about the hour of one in the night of the same day, (*i*) with force and arms, at the parish of (*k*) aforesaid, in the county\* aforesaid, the dwelling house (*l*) of

For burglary, laying an intent to steal as well as an actual theft. (*g*) [\*1001]

(*g*) See a similar precedent Burn J. Burglary, Cro. C. C. 7 Ed. 233. 8 Ed. 87. Starkie, 414. and other forms 1 Leach, 37, 88. 2 Leach, 708. This is the form recommended by Lord Hale, in order to convict the defendant in case it should appear that the felony was not complete of a burglary with intent to steal, and in case the aggravation of burglary should be disproved, of the simple felony, 1 Hale, 560. ante 1098, 9.

(*h*) It is advisable to lay the offence to have been committed on the day preceding the night on which the offence was committed, though it took place after midnight,

but a variance in the day is not material, ante 1095. ante 1 vol. 219.

(*i*) It is necessary to state an hour, but not to prove it with exactness, ante 1095. Burn J. Burglary, ante 1 vol. 219. It is usual to state the hour to have been in the night of the preceding day, though the offence were committed after midnight.

(*k*) The name of the parish is material, and a variance would be fatal.

(*l*) The term *dwelling* must be added; *house* alone would be insufficient, 1 Hale, 550. ante 1095. as to the description.

A. I. (*m*) there situate, feloniously (*n*) and burglariously (*o*) did break (*p*) and enter, (*q*) with intent the goods and chattels of the said A. I. (*r*) in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, (*s*) and then and there with force and arms, one silver tankard of the value of 5*l*. [*here set out the articles stolen as in larceny,*] of the goods and chattels of the said A. I. in the same dwelling house then and there being found, then and there feloniously and burglariously did steal, take and carry away, against the peace of our said lord the king, his crown and dignity. (*t*)

For a burglary with intent to steal (*u*)

That J. V. late of, &c. and J. A. late of, &c. on, &c. about the hour of six in the night of the same day, with force and arms, at, &c. aforesaid, the dwelling house of M. N. spinster, and A. N. spinster, there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said M. N. and A. N. in the said dwelling house then and there being found, then and there feloniously and burglariously to steal, take and carry away, against the peace, &c.

Against the principal and accessories before the fact, for stealing plate from the chapel belonging to Magdalen college, Oxford. (*x*)

That M. W. late of, &c. on, &c. about the hour of one, in the night of the same day, with force and arms at, &c. aforesaid, a certain chapel there situate, called Magdalen College Chapel, (*y*) feloniously and burglariously did break and enter, and one pair of silver candlesticks gilt with gold, of the value of seven pounds, one pair of metal candlesticks gilt with gold, of the value of three pounds, and one communion silver dish gilt with gold, of the value of fifteen pounds, of the goods and chattels of the president and scholars of St. Mary Magdalen College, in the University of Oxford, in the said chapel then and there being found, feloniously and burglariously did steal, take and carry away, against the peace, &c. And the jurors, &c. do further present, that T. G. late of, &c. and W. M. late\* of, &c. before the committing of the said felony and burglary in manner and form aforesaid, to wit, on the said, &c. with force and arms, at, &c. aforesaid, did feloniously and maliciously incite, move, procure, aid and abet, counsel, hire and command the said

[\*1102]

(*m*) As to the description of the owner see ante 1096.

(*n o*) These words are material 4 Co. 39. 40. ante 1098.

(*p q*) These words are essential 1 Hale, 505. ante 1098.

(*r*) The ownership of the goods must be correctly stated as in larceny, ante 948, 9.

(*s*) As to the statement of the intent see ante 1098.

(*t*) The indictment need not con-

clude *contra formam*, because the offence existed at common law though clergy is taken away by statute, ante 1099.

(*u*) This was the Second indictment in the case of Vandercomb, and Abbott, and that on which they were convicted, 2 Leach, 712.

(*x*) This precedent is taken from Cro. C. C. 87. Cro. C. A. 177.

(*y*) It may be laid so without saying *dwelling-house*, ante 1096.

M. W. to do and commit the said felony and burglary in manner and form aforesaid, against the form, &c. and against the peace, &c. And the jurors, &c. do further present, that the said M. W. on the said, &c. with force and arms, at, &c. aforesaid, one pair of silver candlesticks gilt with gold, of the value of seven pounds, one pair of metal candlesticks gilt with gold, of the value of three pounds, and one communion silver dish gilt with gold, of the value of fifteen pounds, of the goods and chattels of the said president and scholars of St. Mary Magdalen college aforesaid, in the same chapel of the same college then and there being found, then and there feloniously and sacrilegiously did steal, take and carry away, against the form, &c. and against the peace, &c. [Third count stating the burglary as before, but omitting the parish, and stating it to be in Magdalen college in the city of Oxford. Fourth count for the burglary, stating the place "at Magdalen college in the university of Oxford, in the county aforesaid, in a certain chapel there situate, called Magdalen college chapel."]

Second count for a sacrilege.

Somerset. That A. B. late of, &c. on, &c. about the hour of twelve in the night of the same day, with force and arms, at, &c. aforesaid, the dwelling house of one C. D. there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said C. D. in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, and then and there with force and arms, one silver watch of the value of forty shillings, of the goods and chattels of the said C. D. in the same dwelling house then and there being found, then and there feloniously and burglariously did steal take and carry away, against the peace of our said lord the king, his crown and dignity.

For burglary with intent to steal, and an actual stealing to the value of 40s. in a dwelling house. (x)

That A. B. late of, &c. on, &c. about the hour of three in the night of the same day, at, &c. aforesaid, *being in the dwelling house* of C. D. esq. there situate, one silk purse of the value of six pence and forty pounds in monies numbered, of the goods, chattels and monies of the said C. D. esq. in the said dwelling house then and there being, with force and arms feloniously did steal, take and carry away ;\* and that the said A. B. being so as aforesaid, in the said dwelling-house, and having committed the felony aforesaid, in manner and form aforesaid, he the said A. B. afterwards, to wit, on the same day and year aforesaid, about the hour of three in the night of the

On 12 Ann, c. 7. for burglary in breaking out of a house. (y) [\*1103]

(x) This is the form recommended by Lord Hale, to include burglary, stealing to the value of 40s. and simple larceny, on either of which the prisoner may be convict-

ed under it, 1 Hale, 560. and general note ante 1098.

(y) From Cro. C. C. 8 Ed. 87. Cro. C. A. 27. see ante 1094.

same day with force and arms, at, &c. aforesaid, the same dwelling-house of the said C. D. then and there feloniously and burglariously did break to get out of the same, and then and there feloniously did break and get out of the same, against the form of the statute, &c. and against the peace, &c. [*Add a count upon the same statute, for stealing in a dwelling-house, above the value of 40s. ante 990, 1.*]

Indictment for burglary, alleging a breaking in with intent, an actual felony committed, and a breaking out against the statute 12 Ann. c. 7. (z)

That A. B. late of, &c. on, &c. at, &c. aforesaid, about the hour of twelve in the night of the same day, with force and arms, at, &c. aforesaid, the dwelling-house of one C. D. there situate, feloniously and burglariously did break and enter, with intent the goods and chattels of the said C. D. in the said dwelling-house then and there being, then and there feloniously and burglariously to steal, take and carry away; and then and there with force and arms, one diamond necklace of the value of forty pounds, of the goods and chattels of the said C. D. in the same dwelling-house then and there being found, then and there feloniously and burglariously did steal, take and carry away; and so then and there being in the said dwelling-house, and having committed the said felony as aforesaid, did then and there, against the form of the statute in such case made and provided, feloniously and burglariously break the said dwelling-house, to get out of the same, and then and there feloniously and burglariously did break and get out of the same, against the form of the statute in such case made and provided, and against the peace, &c.

## INDICTMENTS FOR ARSON.(a)

### PRELIMINARY NOTES.

Offence.  
[\*1104]

The\* offence of arson, the name of which is derived from the Latin *ardeo*, is deemed at common law, to be the voluntary and malicious burning of the house or barn of another, 3 Inst. 96. 1 Leach, 245. To constitute this felony, therefore, there must be a burning—it must be wilful and dictated by malice—the place consumed must be a house or barn—and must be in another's possession. We will consider these

(z) See another form, 2 Starkie, 415.

(a) As to this offence, &c. in general, see 3 Inst. 66, 7. 1 Hale, 566 to 574. Hawk. b. 1. c. 39. Com. Dig.

Arson. 2 East, P. C. 1012 to 1035. Burn. J. Arson. Williams J. Dick. J. Arson. As to the demolition of houses under the riot act, see ante 585, 6, 7. and 4 Burr. 2073.

points in the order in which they arise, stating at the same time, the alterations made by statute.

I. *There must be an actual burning*, 3 Inst. 66. For if fire be thrown into a house in order to consume it, and no part of it is injured, the offence is no felony, 1 Hale, 568. and on this ground it was held, that if a person set fire to paper, in order to burn down a mill, which is not affected by the flames, he cannot be convicted of arson, 1 Leach, 49. But it is not necessary that the entire building should be set on fire, or that any part of it should be entirely consumed; for if once a part of it is on fire, though it should go out without any effort made to extinguish it, the crime will be complete, 3 Inst. 66. And the attempt to commit arson is a misdemeanour at common law, and as such, may be punished with severe penalties, 1 Wils. 139.

II. *It must be wilful and malicious*, 1 Hale, 569. The accidental burning, therefore, of another's property, though it occur in doing an unlawful act, as shooting at poultry or game, is not arson, 1 Hale, 569. The term *malice*, however, in this case as in many others, does not merely imply a design to injure the party who is eventually the sufferer, but an evil and mischievous intention, however general, producing damage to individuals. For it is laid down, that if a man has a design to burn one house, and by accident the flames destroy another, instead of that against which his contrivance\* was directed, he will be guilty of maliciously burning the latter, 1 Hale, 569. The maxim *malitia supplet ætatem* applies to this as well as to other cases; for lord Hale gives an instance of a youth of tender age being convicted before himself, and executed for this offence, on circumstances affording strong evidence of a mischievous discretion, 1 Hale, 569, 570. Although the burning houses through carelessness, is not, at common law, regarded as criminal, the 6 Ann, c. 31. subjects any servant negligently setting fire to a house or outhouse, on conviction before two justices, to forfeit one hundred pounds, and be imprisoned for eighteen months in the house of correction. [\*1105]

III. *What shall be deemed the subject of arson*. According to lord Coke, the definition of arson includes not only the mansion itself, but "the outset also, as barn, stable, cow-house, sheep-house, dairy-house, mill-house and the like parcel of the mansion house," 3 Inst. 67. A barn full of corn was also at common law the subject of arson, 3 Inst. 67. And by 43 Eliz. c. 13. s. 2. "it is felony without benefit of clergy, wilfully and of malice to burn, or cause to be burned, or aid, procure, or consent to the burning of any barn, or *stack of corn or grain*, within Cumberland, Northumberland, West-

morland or Durham." The 22 and 23 Car. II. c. 7. enacts, that "Where any person shall, *in the night time*, maliciously, unlawfully and willingly burn or cause to be burned or destroyed, any rick or stacks of corn, hay, or grain, barns, or other houses, or buildings, or kilns of any person whatsoever," the offence shall be felony; but corruption of blood is saved, s. 3. and death may be commuted by transportation for seven years, at the option of the party convicted, s. 4. Among the provisions of 9 Geo. I. c. 22. it is made a capital offence to set fire to any house, barn, or out-house, or to any hovel, cock, mow, or stack of corn, straw, hay or wood; and the rescue of any one in lawful custody on such a charge, or procuring by gift or promise of reward, any one to join in such illegal acts, are, as in the other cases within that statute, made offences of the same degree. This act, however, is said to have been introductory of no new law; to leave the common law as it was before, and only to remove doubts which had been entertained respecting the exclusion of the principal from clergy, see 1 Leach, 219. and in notis. It does not remove the necessity for malice and design; for though the words wilful and malicious are not expressly used, they enter as much as ever into the essence of the offence, 2 Bla. Rep. 843. Under this act, as at common law, a building must be so connected with the mansion in evidence, as to be shown to belong to it, 3 East, 460. The setting fire to a parcel of corn is not felony; it must be a "cock, mow,\* or stack." And, if otherwise charged in a commitment, the defendant will be bailed on habeas corpus, 1 Leach, 484. It has been holden that a mill cannot be considered as an out-house within its meaning, 3 East, 457. 1 Leach, 49. But by 9 Geo. III. c. 28. it is expressly made capital, wilfully or maliciously to burn or set fire to any description of mill. A stable with a room over it, connected with the principal mansion by fences, is an outhouse, and may be so described, though for some purposes it is a part of the dwelling, 2 East, P. C. 1021. And a common gaol is within the 9 Geo. I. c. 22. especially if a house adjoins, for the residence of the keeper, 1 Leach, 69.

[\*1106]

IV. At common law the house must also be *that of another*. And this refers not to legal title or entire interest, but to the lawful possession, which confers a property while it exists. Thus it has been holden that arson cannot be committed by setting fire to premises which a man enjoys under a lease for years, Cro. Car. 376. or as tenant under an agreement for a lease, 1 Leach, 220. or even as tenant from year to year, 1 Leach, 240. And it has been holden that a tenant in possession of a copyhold messuage is not guilty of arson in



burning it, though it has been surrendered to the of the mortgagee; nor does the circumstance of the premises being insured make any difference, 1 Leach, 218. But where the defendant is only entitled to dower, out of the dwelling-house, which is let to other persons, if she burns it through malice, she will be guilty of arson, Fost. 113. And a pauper suffered by the overseers of a parish to reside in a house for which he pays no rent, may be guilty of this offence in burning it, notwithstanding his possession, 1 Leach, 246. in notis. Mr. Justice Foster, indeed, was of opinion, that a person having but a temporary interest in premises, would commit felony in setting them on fire, Fost. 116. though we have seen that this doctrine is contradicted by subsequent decisions. To set fire to a man's own house, so as to create danger to others, was, however, always a misdemeanour, punishable with fine, imprisonment and pillory, Cro. Car. 377. At length, in consequence of the general adoption of insurances against fire, and the temptation offered to persons, to burn their own houses, in order to defraud the insurers, the 43 Geo. III. c. 58. made it felony without benefit of clergy, "wilfully, maliciously and unlawfully to set fire to any house, barn, granary, hop-oast, malt-house, stable, coach-house, out-house, mill, warehouse or shop, whether they shall then be in the possession of the person or persons so setting fire to the same, or in the possession of any other person or persons, or body corporate, with intent thereby to injure or defraud his majesty or any of his majesty's subjects,\* or any body corporate, or to counsel, aid, or abet another in such offence." And on 52 Geo. III. c. 130. makes it capital, "wilfully or maliciously to burn, or set fire to any buildings, erections, or engines, used or employed in the carrying on or conducting of any trade or manufactory, or any branch or department of any trade or manufactory of goods, wares, or merchandize of any kind or description whatsoever, or in which any goods, wares, or merchandize shall be warehoused or deposited." Besides these provisions, the 12 Geo. III. c. 24. enacts, "That if any person shall, either within this realm, or in any of the islands, countries, forts, or places thereunto belonging, wilfully and maliciously set on fire, or burn, or otherwise destroy, or cause to be set on fire, or burnt, or otherwise destroyed, or aid, procure, abet, or assist in the setting on fire, or burning, or otherwise destroying of any of his majesty's ships or vessels of war, whether the said ships or vessels of war be on float, or building, or begun to be built in any of his majesty's dock yards or building or repairing by contract in any private yards for the use of his majesty, or any of his majesty's arsenals, magazines, dock yards, rope yards, victualling of- [\*1107]

fices, or any of the buildings erected therein, or belonging thereto ; or any timber or materials there placed for building, repairing, or fitting out of ships or vessels ; or any of his majesty's military, naval, or victualling stores, or other ammunition of war, or any place or places where any such military, naval, or victualling stores, or other ammunition of war is, are, or shall be kept, placed, or deposited," he shall be guilty of felony without benefit of clergy. And by s. 2. of the same act the venue may be laid in any county within the realm.

Indictment.

*Indictment.*—The *venue* under 9 Geo. I. c. 22. may be laid in any county, s. 14. At common law, and in cases within other acts, the venue is generally local.

At common law, the terms *voluntary* (or *wilfully*) and *maliciously* are requisite. And, although the 9 Geo. I. c. 22. does not contain these words in the clause applicable to burning, it is necessary that they should be inserted, 2 East. P. C. 1021. There is no occasion to call the place a *dwelling house*, as in case of burglary ; the term house alone will suffice, 1 Hale 567. And although the premises set on fire form part of the mansion, being within the curtilage, it will be no variance to charge them as an outhouse in general terms, 2 East, P. C. 1033. Neither is it necessary to describe the kind of building intended, but it is sufficient to state it according to the language used in the act on which the indictment is founded, Id. *ibid*. And, if the proceedings being framed according to the words of 22 and 23 Car. II. c. 7. aver\* the fact to have been committed in the night time, and it is proved to have been done in the day, this allegation may be rejected as immaterial, and the proceedings held good under 9 Geo. I. c. 22. which does away all distinctions as to the time in which the offence is committed, 2 East, P. C. 1021. And although it is necessary in all cases to charge malice, it is laid down, that if the prisoner intended to burn one house, and actually destroyed another, the indictment may state generally that the actual burning was malicious, 1 Hale, 569.

The name of the owner of the house must be stated as in case of burglary, 2 East, P. C. 1034. though if he cannot be ascertained, it might be alleged as the house of a person unknown, from analogy to the cases of larceny and murder, ante 733. and 948, 9. It is therefore necessary to determine the party to whom the premises belong. This, however, is not so difficult an investigation as in the case of a burglarious entry, for it may be inferred from the cases deciding, that a party cannot, at common law, be guilty of arson, by setting fire to houses in which he has an interest, what possession

is sufficient in the party charged as the owner. When any doubt is entertained on this part of the subject, the difficulty may be obviated by the insertion of several counts to correspond with the evidence.

*Evidence.*—It was holden by six judges against five, that on trial of an indictment on 43 Geo. III. c. 58. laying the intention to defraud the insurers, an unstamped policy of insurance cannot be given in evidence, 2 Leach, 1007. See vide ante 1036, where this subject is investigated at large.

*Punishment.* Arson was a felony at common law, 3 Inst. 66. The 8 Hen. VI. c. 6. made it high treason under some peculiar circumstances of public hostility, but that statute was repealed by 1 Edw. VI. c. 12. When the 1 Edw. VI. c. 12. s. 10. took away clergy from several other offences, it was entirely silent on the subject of arson. And although by 23 Hen. VIII. c. 1. and 25 Hen. VIII. c. 3. clergy has been taken away from it, the last mentioned statute of Edward restored it, when it directed that all cases of felony not specially provided for within it, should still receive that benefit as at the commencement of the reign of Henry the Eighth. Some writers, however, have thought that the statutes thus repealed were revived by 5 and 6 Edw. VI. c. 10. the wording of which seems to be ambiguous. 11 Co. 29. At length the 4 and 5 P. and M. c. 4, ousted accessaries before the fact of clergy in the case of arson, among several other offences. After this it was holden that principals in wilful burning were deprived of clergy; but much doubt was entertained whether on the\* ground of the supposed revival of the statutes of Henry the Eighth, or an implication from the 4 and 5 P. and M. by which accessaries before the fact were excluded. See Fost. 333 to 336. These doubts gave occasion to the clause in 9 Geo. I. c. 22. already stated; and which as it takes away clergy in general, renders all further discussion of the subject needless. We have also seen how that provision has been extended by 43 Geo. III. c. 58. and 52 Geo. III. c. 130. which make the setting fire to all the premises which they enumerate, capital.

Evidence.

Punish-  
ment.

[\*1009]

That J. M. late of, &c. not having the fear of God before his eyes but being moved and seduced by the instigation of the devil, (c) on, &c. with force and arms, at, &c. aforesaid, a certain house (d) of one W. C. (e) there situate, feloniously,

For setting  
fire to a  
dwelling-  
house. (b)

(b) See other precedents, 4 dwelling-house, 1 Hale, 567. Wentw. 20. Starkie. 417.

(c) These words are not material. (e) As to the description of the owner see ante 1108.

(d) It is not necessary to say

wilfully and maliciously did set fire to, and the same house then and there, by such firing as aforesaid, feloniously, wilfully and maliciously did burn and consume, against the peace, &c. [*Second count on 9 Geo. I. c. 22. as in the next precedent.*]

On 9 Geo.  
I. c. 22. s.  
1. for wil-  
fully burn-  
ing the  
house of  
another  
(f)

That W. G. late of, &c. not having, &c. but being moved and seduced, &c. after the first day of June in the year of our lord one thousand seven hundred and twenty-three, to wit, on, &c. about the hour of two in the night of the same day, with force and arms, at, &c. aforesaid, a certain house of one G. S. there situate, feloniously, voluntarily and maliciously did set fire to, and the same house then and there by such firing as aforesaid, feloniously, voluntarily and maliciously (g) did then burn and consume against the form of the statute, &c. and against the peace, &c.

On 9 Geo.  
I. c. 22. for  
setting  
fire to a  
stack of  
hay. (h)

That A. B. late of, &c. on, &c. at, &c. aforesaid, A certain stack of hay (i) of and belonging to one J. P. feloniously, unlawfully, wilfully and maliciously did set fire to, (k) against the form of the statute, &c. and against the peace, &c.

[\*1110]  
On 9 Geo.  
I. c. 22. for  
setting  
fire to a  
place of  
confinement in a  
borough.  
(l)

First  
count stat-  
ing the  
building  
to be a  
prison.  
Second  
count  
committing  
what re-  
lates to its  
descrip-  
tion as  
a prison.

That\* W. C. late of, &c. being an evil disposed person, and not regarding the laws of this realm, nor fearing the pains and penalties therein contained, on, &c. about the hour of twelve in the night of the same day, with force and arms, at, &c. aforesaid, a certain building there situate, and being called the Hole (the same then and there being the prison of the borough of K. in the county aforesaid) then and there unlawfully, wickedly, wilfully, maliciously and injuriously did set fire to, and the same building called the Hole did by such firing then and there burn, consume and destroy, to the evil example, &c. against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said W. C. on the said, &c. about the hour of twelve in the night of the same day, with force and arms, at, &c. aforesaid, a certain building there situate and being called the Hole, then and there unlawfully, wickedly, wilfully, maliciously and injuriously did set fire to, and the same building called the Hole, then and there unlawfully, wickedly and injuriously, did by such firing, &c. burn, consume and destroy, to the

(f) See a similar precedent, Cro. C. C. 92.

(g) These words must be inserted here, although the statute does not contain them.

(h) See a similar form, Starkie, 421.

(i) If described as a parcel of hay, the indictment would be defective,

1 Leach, 484.

(k) This is sufficient under the act without alleging that the property is burned or consumed.

(l) See another precedent, 2 St. 422. and 1 Leach, 69. where a prison was holden to be a house within the statute.

evil example, &c. in contempt, &c. against the form of the statute, &c. against the peace, &c.

That A. B. late of, &c. being an evil disposed person, and not regarding the laws and statutes of this realm, nor the pains and penalties therein contained, after the first day of June in the year of our lord one thousand seven hundred and twenty-three, to wit, on, &c. with force and arms, at, &c. aforesaid, did feloniously and maliciously procure C. D. by promise of money, to wit, of the sum of twenty shillings to join him the said A. B. unlawfully, feloniously and maliciously, in setting fire to a certain stack of hay belonging to E. F. in the farm yard of him the said E. F. situate, lying and being in the said, &c. against the form of the statute, &c. in contempt of, &c. to the evil example, &c. and against the peace, &c.

On 9 Geo. I. c. 22. for feloniously procuring a person by promise of money to join in setting fire to a stack of hay.

That J. S. late of, &c. together with divers other ill-disposed persons, whose names are to the said jurors at present unknown, heretofore, to wit, on, &c. with force and arms, at, &c. did feloniously, wilfully and unlawfully set fire to and burn a certain cotton mill, warehouse and shop, situate at, &c. aforesaid, and then being in the possession of one T. W. and one J. D., with intent thereby to injure the said T. W. and J. D., they the said T. W. and J. D. at the time of the committing the felony as aforesaid, being liege subjects of our said lord the king, against the form of the statute, &c. and\* against the peace, &c. And the jurors, &c. do further present, that the said J. S. &c. and the other ill disposed persons, whose names are to the said jurors, unknown, afterwards, to wit, on the same day and year aforesaid, with force and arms, at, &c. aforesaid, did feloniously, wilfully, maliciously and unlawfully set fire to and burn a certain mill, to wit, a cotton mill, situate at, &c. aforesaid, and then being in the possession of the said T. W. Third count charges the prisoner with setting fire to a certain warehouse, &c. Fourth count with setting fire to a certain shop, &c.

For felony on 9 Geo. III. c. 28. for setting fire to a cotton mill. (m)

[\*1111]

That A. B. late of, &c. unlawfully and maliciously devising and intending to set on fire and burn a certain house belonging to him the said A. B. situate in the parish aforesaid, in the county aforesaid, on, &c. with force and arms, at, &c. aforesaid, unlawfully, wickedly and maliciously did set fire to a certain part of the wooden floor, of and belonging to the said house, which said wooden floor, was then and there placed on the ground floor of the said house, which said house was

For a misdemeanor at common law in setting fire to a floor in the defendant's own house

(m) See this precedent, Starkie, 420. It was objected that a cotton mill was not within the meaning of

the act; but this point was decided against the defendant.

contiguous to others to the public alarm and danger.  
(n)

contiguous and near to certain dwelling houses of and belonging to divers of the liege subjects of our said lord the king, situate in the parish aforesaid, in the county aforesaid, with a wicked intention, by means of such setting fire to the said part of the said wooden floor of and belonging to the said house of the said A. B. then and there unlawfully, wilfully and maliciously to set on fire and burn the said house of the said A. B. to the great damage, danger, terror and affrightment of all the liege subjects of our said lord the king, near the house of the said A. B. then and there inhabiting and dwelling, in contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c. [*Second count for an attempt to burn generally, as third count of the next precedent.*]

Third count for attempting to set fire to three other rooms.

And the jurors, &c. do further present that the said E. W. on the said, &c. with force and arms, at, &c. aforesaid, unlawfully, wickedly and maliciously did attempt then and there to set set fire to, burn and consume certain rooms, tow it, three rooms of and belonging to the dwelling house of the said E. D. situate in a certain street called Great Bath Street, in the parish aforesaid in the county aforesaid, and which said last mentioned rooms then and there were in the occupation of her the said E. W. the said last mentioned dwelling house, there being contiguous and adjoining to certain other dwelling houses of and belonging to divers of the liege subjects of our said lord the king, to the great danger, &c. [*as before.*]

[\*1112] For a misdemeanor at common law against a lodger for setting fire to part of the wainscot of one of her rooms with intent to burn the rooms she occupied.  
(o)

That E. W. late of, &c. on, &c. with force and arms, at, &c. aforesaid, unlawfully, wilfully and maliciously did set fire to part of the wainscot of and belonging to a certain room, then being in the\* occupation of her the said E. W. and then being parcel of the dwelling house of E. D. situate in a street called Great Bath Street, in the parish aforesaid, in the county aforesaid, and which said dwelling house there, was contiguous and adjoining to certain other dwelling houses, of and belonging to divers of the liege subjects of our said lord the king, with a wicked intention, by means thereof then and there, unlawfully, wilfully and maliciously to burn and consume the said room, and two other rooms, then and there being in the occupation of her the said E. W. and which said last mentioned rooms, then were also parcel of the said dwelling house of him the said E. D. to the great damage of the said E. D. to the great danger, terror and affrightment of

(n) See other precedents, 4 Wentw. 58. 21. and see ante 1106, 7.

(o) See a similar precedent, 4 Wentw. 59.



all the liege subjects of our said lord the king, near the said dwelling house of the said E. D. then and there inhabiting and dwelling, in contempt, &c. and against the peace, &c. And the jurors, &c. further present, that the said E. W. on the said, &c. with force and arms, at, &c. aforesaid, unlawfully, wilfully, wickedly and maliciously, did set fire to a certain quantity of gunpowder, to wit, one ounce of gunpowder, then lately before put by her the said E. W. into a certain wooden trunk, among divers combustible materials then being in the said trunk, and which said trunk then was placed in a certain room, there called the dining room, then and there being in the occupation of her the said E. W., and which said room, called a dining room, then was parcel of the said dwelling house of him the said E. D. situate in a certain street called Great Bath Street in the parish aforesaid, in the county aforesaid, and which said dwelling house, then was contiguous and adjoining to certain other dwelling houses, thereof, and belonging to divers of the liege subjects of our said lord the king, with a wicked intention by means thereof, then and there unlawfully, wilfully and maliciously to set on fire and burn the said room called the dining room, so then being in the occupation of her the said E. W., to the great damage, &c. [*as before.*]

Second count for setting fire to gunpowder and combustibles in a trunk in a room occupied by the defendant.

That J. S. late of, &c. being a person of a wicked disposition and unlawfully and maliciously devising, contriving and intending, to feloniously set fire to and burn and consume a certain house of one J. R. there situate, of which said house he the said J. S. was then, to wit, on the day and year hereafter mentioned, possessed, for a term of years then and yet to come and unexpired, on, &c. with force and arms, at, &c. aforesaid, a certain lighted wax candle which he the said J. S. had then lately before set fire to and lighted,\* did unlawfully, wickedly and maliciously, fix and put in a certain closet, under and adjoining certain wooden stairs called the kitchen stairs, in the aforesaid house of the said J. R. which said house then was and now is situate and being in a certain neighbourhood and street there, called New Bond-street, and contiguous and adjoining to certain dwelling houses there, of and belonging to divers of the liege subjects of our said lord the king, and that he the said J. S. did then and there unlawfully, wickedly and maliciously, put and place about, unto and against the said lighted candle so fixed and put by him the said J. S. in the said closet as aforesaid, divers matches and small pieces of wood and other combus-

Against a person for a misdemeanour in attempting to burn his own house. (p)

[\*1113]

(p) See a similar precedent, Starkie, 637.

Second  
count.

tible materials, with a wicked and malicious intention, by means thereof then and there feloniously to set fire to the aforesaid house of the aforesaid J. R., and to burn and consume the same, to the great damage of the said J. R. to the great damage, terror and affrightment of all the liege subjects of our said lord the king near the said house then and there inhabiting and dwelling, and against the peace, &c. And the jurors, &c. do further present, that the said J. S. being such person as aforesaid, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, a certain wax candle which he the said J. S. had then lately before set fire to and lighted, did unlawfully, wickedly and maliciously fix and put up in a certain closet under and adjoining to certain wooden stairs called the kitchen stairs, in the dwelling house of him the said J. S. there situate, which said dwelling house then was and now is situate and being in a certain neighbourhood and street, there called New Bond-street, and contiguous and adjoining to certain dwelling houses then and there belonging to divers of the liege subjects of our said lord the king, and that the said J. S. did then and there unlawfully, wickedly and maliciously put and place about, unto and against the said last mentioned lighted candle so fixed and put by him the said J. S. in the said last mentioned closet as aforesaid, divers matches and small pieces of wood and other combustible materials, with a wicked and malicious intention, by means thereof then and there feloniously to set fire to the aforesaid dwelling house of him the said J. S. and to burn and consume the same, to the great danger, terror and affrightment of all the liege subjects of our said lord the king, near the said dwelling house of him the said J. S. then and there inhabiting and dwelling, and against the peace, &c. Certain matches and small pieces of wood then and there being in a certain other house of the said J. R. there situate, to wit, under certain wooden stairs in the same house, did unlawfully, wickedly and maliciously set fire to the said last mentioned house then and now being, and situate, &c. in a certain neighbourhood and street, there called New Bond-street,\* and contiguous and adjoining to certain dwelling houses there, of and belonging to divers of the liege subjects of our said lord the king, with a wicked and malicious intention, by means thereof then and there feloniously to set fire to the aforesaid last mentioned house of the said J. R. and to the damage, terror and affrightment of all the liege subjects of our lord the king, near the said last mentioned house then and there inhabiting and dwelling, against the peace, &c. Certain matches and small pieces of wood then and there being in the dwelling house of him the said dwel-

Third  
count.

[\*1114]

Fourth  
count.

ling house of him the said J. S. to wit, under certain wooden stairs in the said dwelling house, did unlawfully, wickedly and maliciously set fire to the said last mentioned dwelling house, then and now being situate, &c. [as in the last.] A Fifth count.  
 certain other house of the said J. R. there situate, and also situate and being in a certain neighbourhood and street there, called New Bond-street, and contiguous and adjoining to certain dwelling houses there, of and belonging to divers of the liege subjects of our said lord the king, did unlawfully, wickedly and maliciously attempt then and there feloniously to set fire to, and burn and consume, to the great damage, &c. [as before.] A Sixth count.  
 certain other dwelling house of him the said J. S. there situate, and also situate and being in a certain neighbourhood and street there, there called New Bond-street, and contiguous and adjoining to certain dwelling houses there, of and belonging to divers liege subjects of our said lord the king, did unlawfully, wickedly and maliciously attempt then and there feloniously to set fire to and burn and consume, to the great danger, terror and affrightment of all the liege subjects of our said lord the king, near the last mentioned dwelling house of him the said J. S. then and there inhabiting and dwelling, against the peace, &c.

That E. G. late of, &c. on, &c. with force and arms, at, &c. aforesaid, feloniously, wilfully, maliciously and unlawfully did set fire to a certain house there situate, and then being in the possession of him the said E. G. with intent thereby to injure and defraud "the London Insurance of houses or goods from fire," against the form of the statute, &c. and against the peace, &c. *Second count the same as the first, only stating the intent to be to injure and defraud the corporation of the London Assurance of houses and goods from fire, against the form, &c. and against the peace, &c. Third count the same, only stating the intent to be to injure and defraud M. W., M. R. and C. H. T. then being subjects of his majesty. Fourth count the same, stating the intent to be to injure one W. R. then being one of his majesty's subjects.]*

For felony, on 43 Geo. III. c. 58. s. 1. for setting fire to a house in the prisoner's own possession. (g)

That\* J. H. late of, &c. on, &c. with force and arms, at, &c. aforesaid, twenty tons weight of hemp, of the value of one hundred pounds; ten cable ropes, each thereof being in length one hundred fathoms, and in circumference three inches, and of the value of eighty pounds: and six tons weight of cordage of the value of two hundred pounds, the said hemp, cable ropes and cordage, then and there being naval stores of our said lord the king, and then placed and

[\*1115] On 12 Geo. III. c. 24. for felony in setting fire to king's stores in the rope house, dockyard of his majesty. (r)

(g) See similar precedents, Cro. C. C. 92. 2 Starkie, 420.

(r) This was the indictment against Hill, Starkie, 421.

Second  
count for  
setting  
fire to  
buildings.

Third  
count for  
setting  
fire to a  
building  
of the  
king, con-  
taining  
naval  
stores.

deposited in a certain building in the dock yard of our said lord the king there situate, called the rope house, feloniously, wilfully and maliciously, did set on fire and burn, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said J. H. on the said, &c. with force and arms, at, &c. aforesaid, a certain building erected in the dock yard of our said lord the king there situate, called the rope house, feloniously, wilfully and maliciously, did set on fire, and cause and procure to be set on fire, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said J. H. on the said, &c. with force and arms, at, &c. aforesaid, a certain building of our said lord the king there situate, in which great quantities of naval stores, that is to say, twenty tons' weight of hemp; ten cable ropes, and six tons' weight of cordage, of our said lord the king, were then placed and deposited, feloniously, wilfully and maliciously, did set on fire, and cause and procure to be set on fire, against the form of the statute, &c. and against the peace, &c.

## INDICTMENTS FOR MALICIOUS MISCHIEF TO REAL PROPERTY.

[\*1116]  
On 9 Geo.  
I. c. 22.  
for felony  
in break-  
ing down  
the head  
and  
mound of  
a fish  
pond,  
whereby  
the fish  
were lost.

That A. B. late of, &c. being an evil disposed person, after the first\* day of June, in the year of our Lord one thousand seven hundred and twenty-three, to wit, on, &c. with force and arms, at, &c. aforesaid, the head and mound of a certain fish pond in a certain orchard belonging to J. D. esquire, there situate and being, unlawfully, maliciously, and feloniously did break down, whereby the fish in the same pond then and there being were lost and destroyed, to the great damage of the said J. D. against the form of the statute, &c. to the evil example, &c. and against the peace, &c.

(s)

(s) See similar precedents, Cro. C. C. 7 Ed. 214. 8 Ed. 82. Starkie, 551. This indictment is founded on the clause in 9 Geo. I. c. 22. which enacts, that if any person shall unlawfully and maliciously break down the head or mound of any fish-pond, whereby the fish shall be lost or destroyed; or forcibly rescue any person being lawfully in custody for such an offence; or by gift or promise of money or other reward, procure any of the king's subjects

to join in such unlawful act; he shall be guilty of felony without benefit of clergy. By s. 14. of the same statute, the venue may be laid in any county, at the option of the party indicting. Under this act, the defendant must be actuated by malice against the owner; for if the intent was to steal the fish the offence will not be capital, 2 East, P. C. 1067. 1072, 4. 1 Leach, 527, 539. but see Dawson's case ante 1087, 8.

That T. S. late of, &c. after the first day of June, in the year of our Lord one thousand seven hundred and twenty-three, to wit, on, &c. with force and arms, at, &c. aforesaid, unlawfully, maliciously and feloniously, did cut down and destroy two elm trees in a certain avenue to the dwelling-house of one W. S. there planted and then growing for ornament there (he the said W. S. then being the owner (u) of the said trees) to the great damage of the said W. S. against the form of the statute, &c. and against the peace, &c.

That H. S. late of, &c. and A. W. late of, &c. on, &c. with force and arms, at, &c. aforesaid, the dwelling-house (or shop) of one J. D. there situate, then and there feloniously and by force did break and enter into, with intent feloniously-wilfully and maliciously to cut and destroy a certain quantity of woollen serge in a certain loom used in the making thereof, [or "*to cut, destroy and break, divers, to wit, two looms then and there employed in the making of woollen goods,*" ] belonging to him the said J. D. in the same\* dwelling house then and there being, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said H. S. and the said A. W. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, twenty yards of woollen serge of the value of four pounds, of the goods and chattels of the said J. D. in a certain loom used in the making of woollen serge belonging to him the said J. D. in the house of him the said J. D. then and there being, then and there feloniously, wilfully and maliciously did cut and destroy, (they the said H. S. and

On 9 Geo. I. c. 22. for felony in maliciously cutting down

trees growing for ornament. (t)

On 22 Geo. III. c. 40.

s. 2. for forcibly entering a dwelling house with intent to cut serge in the loom or looms, and for cutting and destroying the same.

(w)

[\*1117]

First count for breaking, &c. with intent to cut, &c. Second count for actual cutting, omitting the breaking, &c.

(t) See similar precedents Cro. C. C. 82. Starkie, 551. This indictment is founded on the clause in the 9 Geo. I. c. 22. which makes it capital "unlawfully and maliciously to cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit." See 6 Geo. III. c. 36. and 6 Geo. III. c. 48. respecting the destroying or stealing trees without malice; ante 926. larceny.

(u) The name of the owner is material, 1 Leach, 253.

(w) See similar precedents Cro. C. C. 7 ed. 692, 8 ed. 438. Starkie, 561. The indictment is founded on 22. Geo. III. c. 40. s. 2. which enacts, that "If any person shall by day or by night break into any house or shop with intent to cut or de-

stroy any serge or other woollen goods in the loom, or any tools employed in the making thereof; or shall wilfully and maliciously cut or destroy any such serges or woollen goods in the loom, or on the rack or shall burn, cut, or destroy any rack on which any such serges or other woollen goods are hanged in order to dry; or shall wilfully and maliciously break or destroy any tools used in making any such serges or woollen goods, not having the consent of the owner'so to do," he shall be guilty of felony without benefit of clergy. As to silk, see s. 3. of the same act; linen and cotton s. 3. plate glass 38 Geo. III. c. 17. The 52. Geo. III. c. 130. makes the destruction of buildings and engines for trade capital.

A. W. then not having or either of them having the consent of the said J. D. the owner aforesaid so to do) against the form of the statute, &c. and against the peace, &c.

For fish-  
ing in the  
king's  
park, on  
5 Geo.  
III. c. 14.  
(x)

[\*1118]

That E. M. late of, &c. A. K. late of, &c. W. T. late of, &c. after the first day of June in the year of our Lord seven-  
teen hundred and sixty-five, to wit, on, &c. with force and  
arms, at, &c. aforesaid, unlawfully did enter into a certain  
park of our sovereign lord the king there situate, called Cran-  
bourne park, the said park being fenced in and inclosed,  
wherein a certain pond of water then and there was, and did  
then and there steal, take, kill and destroy, twenty-four fish  
called carp, of the value of twenty-four shillings, of the goods  
and chattels of our said sovereign lord the king, then and  
there being, and then and there bred, kept and preserved, in  
such pond as aforesaid, without the consent of our said so-  
vereign lord the king, then and there being the owner there-  
of, against the form of the statute, &c. and also against the  
peace, &c. And the jurors, &c. do further present, that the  
said E. M. &c. on the said,\* &c. with force and arms, at, &c.  
aforesaid, unlawfully did enter into a certain paddock being  
fenced in and inclosed, wherein a certain pond of water then  
and there was, and did then and there steal and take twenty-  
four fish called carp, of the value of twenty-four shillings, of  
the goods and chattels of our said sovereign lord the king,  
then and there being, and then and there bred and kept  
in such pond of water aforesaid, without the consent of our  
said lord the king, then and there being the owner there-  
of, against the form of the statute, &c. and also against the  
peace, &c.

On 10  
Geo. II. c.  
32. s. 9.

That T. W. late of, &c. being an ill designing and disor-  
derly person, and not regarding the laws and statutes of this

(x) See a precedent 4 Wentw. 356. and indictment for larceny ante 929. 973. The 5. Geo. III. c. 14. 1. on which this indictment is framed enacts, "that if any person shall enter into any park or paddock fenced in and inclosed or into any garden, orchard, or yard, adjoining or belonging to any dwelling-house, in or through which park or paddock, garden, orchard, or yard, any river or stream of water shall run or be, or wherein shall be any river, stream pond, pool, moat, stew, or other water and by any ways means, or device whatsoever, shall steal, take, kill, or destroy any fish bred, kept, or preserved in any such river, &c. with-

out the consent of the owner or owners thereof; or shall be aiding or assisting in the stealing, taking killing or destroying any such fish as aforesaid; or shall receive or buy any such fish, knowing the same to be stolen or taken as aforesaid," being convicted by verdict or confession he shall be transported for seven years. The trial must be in the county where the offence was committed, and the prosecution must be commenced within six months after the crime. The cognizance of the offence is given to the justices gaol delivery, id. ibid. But any offender discovering his accomplices will be entitled to a pardon, s. 2.



realm, nor the pains and penalties therein contained, after the twenty-fourth day of June, which was in the year of our Lord seventeen hundred and thirty-seven, to wit, on, &c. in the ward of B. otherwise B. ward, being an extra-parochial place in the forest of Needwood, in the county of Stafford, he the said T. W. then and there being armed with fire-arms, and other offensive weapons, unlawfully did come, and then and there in the said ward, being an extra-parochial place, within the forest of N. in the said county of S. aforesaid, (the said forest then and long before and still being the forest of our said sovereign lord the king, and also a forest wherein fallow deer, on the said, &c. and for the space of forty years and more then last past have been usually kept, and still are usually, kept,) with an intent then and there unlawfully to kill and take away one fallow deer of our said lord the king, then and there being in the said ward without the consent of our said lord the king then and there being owner thereof, or of the most noble T. W. duke of Devonshire, then being ranger of the said forest, or of the right honourable G. lord Vane, then keeper of the said ward called B. ward in the said\* forest, they the said duke, and G. lord Vane, then and there being the persons chiefly entrusted with the custody of the said deer within the said ward, or of any other person who then was chiefly entrusted with the keeping of the said ward, or with the custody of the said deer then being in the said ward, and being also then and there so armed as aforesaid, did then and there unlawfully beat and wound the said E. P. in the due execution of his said office, and then and there did other injuries to the said E. P. to the great damage of the said E. P. in contempt, &c. to the evil example, &c. against the form of the statute, &c. and against the peace, &c. And the jurors, &c. that the said T. W. on, &c. aforesaid, at, &c. aforesaid, being then and there armed with fire arms and

for going armed with fire arms, into a royal forest, with intent to kill deer, and assaulting the keepers' assistant.

(y)

[\*1119]

Second count for the assault on the officer.

(y) This indictment is from 6 Wentw. 368. It is framed on the 10 Geo. II c. 32. s. 9. which directs the offence to be punished with transportation for seven years. By the 9 Geo. I. c. 22. it was made a capital felony. But as the 10 Geo. II. repealed the more severe law, so it was itself, in effect, repealed, except as to arms and disguises, by 16 Geo. III. c. 30. which punishes the attempt to take or destroy deer with a penalty of twenty pounds, the actual killing, wounding, destroying, or taking thirty pounds for every deer respectively, and makes

the second offence a single felony punishable with transportation for fourteen years. Since this last provision an offender was indicted on the black act, for the capital offence, but it was holden that the subsequent statute inflicting a milder punishment effectually though silently repealed the more severe. 1 Leach, 271. Where, however, as in this case, the offender enters the forest armed, and assaults the keeper, the 10 Geo. II. is still in force, and the indictment should be framed as in the precedent given.

Third  
count.

[\*1120]

Fourth  
count.

other offensive weapons, with force and arms, unlawfully did come into the chase of N. in a certain part thereof, called the ward of B. alias B. ward, and the said ward last mentioned, then and there being an extra-parochial place within the said chase, and the said chase then and there being the chase of our said lord the king, and a place wherein deer were usually kept, with an intent then and there unlawfully to kill and take away one fallow deer, then and there being in the said last mentioned ward, and being also then and there so armed as aforesaid, did then and there with force and arms, unlawfully make an assault and affray upon the said E. P. then and there being one of the assistants of the said lord V. then and there being the keeper of the said last mentioned ward, where deer then were usually kept, then and there being in the said last mentioned ward in the due execution of his the said E. P.'s office, and in the peace of God and our said lord the king, and the said T. W. being also then and there so armed as aforesaid, did then and there unlawfully beat and wound the said E. P. in the due execution of his said office, and then and there did other injuries to the said E. P. to the great damage of the said E. P. in contempt, &c. to the evil example, &c. and against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said T. W. on, &c. aforesaid, at, &c. aforesaid, being then and there armed with fire-arms, unlawfully did come into a certain other ward of our said lord the king, lying within and part of the said forest of our said lord the king, called the forest, in which said last mentioned ward and forest deer were then usually kept, with an intent then and there unlawfully to kill and take away one fallow deer, then and there being in the said last mentioned ward and forest, and did then and there unlawfully beat and wound the said E. P. then and there being one of the assistants of the said lord V. he the said lord V. then and there being the keeper of the said last mentioned ward where deer were usually\* kept, and then and there being in the last mentioned ward, in the due execution of his the said E. P.'s office, to the great damage, &c. and against the peace, &c. And the jurors, &c. that the said T. W. on, &c. aforesaid, at, &c. aforesaid, with force and arms, and armed with fire-arms and other offensive weapons, unlawfully did come into the said forest of our said lord the king, called the forest of N. in the said county of S. the same then and there being an extra-parochial place where deer were then and there usually kept, with an intent then and there unlawfully to kill and take away one fallow deer, then and there being in the said forest, and did then and there unlawfully beat and wound the said E. P. then and there be-

ing one of the assistants of the said lord V. he the said lord V. then and there being one of the keepers of the said forest, where deer then and there were usually kept, and then and there being in the said forest, in the due execution of his the said E. P.'s office, to the great damage, &c. and against the peace, &c.

## INDICTMENTS FOR FORCIBLE ENTRIES AND DETAINERS. (z)

### PRELIMINARY NOTES.

*Offence.*—These offences consist in the violently taking or The of keeping possession of houses, buildings, or lands, with me- fence. naces, force and arms, without the authority of law. 4 Bla. Com. 148. A forcible entry is when a person enters into lands or tenements, manu forti; as if he brings unusual weapons—or threatens violence—breaks open the door—or violently ejects the possessor, Co. Lit. 257. Com. Dig. Forcible entry, A 2. 8. T. R. 357. It is no excuse that he enters to make a distress, or to enforce a lawful claim. Com. Dig. Forcible entry. A. 2. 8 T. R. 361. Nor does it alter the case, that no one is within the house, or that possession was ultimately obtained by entreaty, id. ibid. If one person of the company uses violence, all are alike guilty, Co. Lit. 2576. A forcible *detainer* is when a man who has entered peaceably, maintains his possession by force; as if he threatens to do bodily harm to\* any one who shall attempt to enter, uses a larger [\*1121] quantity of arms that is usual for protection, or assembles a crowd of people to repel the approach of others. Com. Dig. Justices, B. 1. It may be committed by a lessee forcibly maintaining possession when his term is expired, a mortgagor after forfeiture of the mortgage, the *feoffee* of a disseisor after entry or claim of the party disseised, and a tenant when he forcibly resists a distress for rent in arrear. Id. ibid. It is punished rather as a breach of the peace than an offence against the property of an individual. At all events, it is evident from the modern cases, that an actual breach of the peace and a violence must be charged in the indictment, or the court will quash it upon motion, or the defendant may demur. 3 Burr. 1701. 1706. 1731. 8 T. R. 360. For no indictment will lie for a mere civil injury, however obnoxious the

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(z) See in general, Hawk. b. 1. Burn's Justice, Forcible Entry. c. 64. Com. Dig. Forcible Entry.

trespass. *Id. ibid.* It is clear however that an indictment may be supported at common law for a forcible entry, 8 T. R. 360. The 5 Rich. 2. c. 7. enacts "that none from henceforth make any entry into any lands and tenements but in case where entry is given by the law; and in such case not with strong hand nor with multitude of people, but only in peaceable and easy manner. And if any man from henceforth do to the contrary, and thereof be duly convict, he shall be punished by imprisonment of his body, and thereof ransomed at the king's will." This act, however, gave no new or speedy remedy. And, therefore, the 15 Rich. II. c. 2. empowers any justice of the peace, on complaint made to him, to take sufficient power of the county and go to the place where the force is made, and if he there find a party holding forcible possession, he may send him to the next gaol there to abide convict by the record of the justice till he makes fine and ransom to the king. This act being found defective, the 8 Hen. VI. c. 9. extends it to a forcible detainer; gives justices power to enquire of a forcible entry though the violence is over before they arrive; to re-seize the lands and tenements, and restore possession of them to the party ejected. It is, however, provided that those who keep with force premises of which they or their ancestors have continued in possession for three years or upwards are not within the statute. And further to enforce this proviso, the 31 Eliz. c. 11. declares and enacts, "that no restitution upon any indictment of forcible entry or holding with force be made to any person if the person so indicted hath had the occupation or been in quiet possession for the space of three whole years together next before the day of such indictment so found, and his estate therein not ended; which the party indicted may allege for stay of restitution, and restitution to stay till that be tried\* if the other will deny or traverse the same." And by the 21 Jac. 1. c. 25. it is provided "that such judges, justices or justice of the peace as by reason of act or acts of parliament then in force were authorised and enabled upon enquiry to give restitution of possession unto tenants of any estate of freehold, of their lands or tenements which shall be entered upon by force, or from them withholden by force, shall by reason of that act have the like and the same authority and ability from thenceforth (upon indictment of such forcible entries or forcibly withholding before them duly found) to give like restitution of possession unto tenants for term of years, tenants by copy of court-roll, guardians by knight's service, tenants by elegit, statute merchant, and staple of lands or tenements by them so holden, which shall be entered upon by force, or holden from them by force." The restitution of the land, is, therefore, the principal reason for indicting.

[\*1122]

**Indictment.**—In an indictment for a forcible entry the place must be described in terms sufficiently certain. And, therefore, if it merely charges that the defendant forcibly entered a certain tenement, which may signify any thing, which may be held and even an incorporeal hereditament, it will be defective. 1 Sess. Cas. 357. 1 East, 441. 2 Stra. 891. So, to allege that the defendant entered two closes of meadow or pasture, a house, a rood of land, or certain lands belonging to a house, is bad, for the same certainty is required as in a declaration in ejectment. Hawk. b. 1. c. 64. s. 37. The indictment must also shew what party had the possession of the premises. 1 Sess. Cas. 359. and on the 8 Hen. VI. must state that the place was the freehold of the party grieved; but it seems to be sufficient on the statutes of Richard the Second to shew who had the possession. Hawk. b. 1. c. 64. s. 38. On the 8 Hen. VI. the allegation must be express, that the place was the freehold of the party grieved, at the time the injury arose. *id. ibid.* And as under this act it must be shewn that the party aggrieved was seised of a freehold, in order to bring the case within it, so under 21 Jac. 1. c. 15. the indictment must allege such an estate in him as that statute requires; and, therefore, to set forth, in general, that he was possessed, or possessed, for a certain term, without adding that it was for years, is not good, for, in the first case, it may be supposed that he is merely a tenant at will, and, in the second, that he is possessed of a term for life, in neither of which cases will the statute of James apply. Hawk. b. 1. c. 64. s. 38. But an indictment at common law, stating that the prosecutor was possessed will suffice. 8 T. R. 360. The indictment need not state the offence to have been committed both *manu forti* and *vi et armis*, but the former will suffice, as it includes the latter. Cro. Eliz. 461. It is the words “with a strong hand” that distinguish the indictable offence from the civil trespass. At least a public breach of the peace must appear. 8 T. R. 361, 2. If the word “disseised” is inserted, it is not also necessary to use the terms *expelled* or *unlawfully*, for the last is superfluous, and the first is implied in the word *disseised*, but unless the word *disseised* be used, the indictment at common law should contain the word “expelled,” 8 T. R. 357. Cro. Jac. 32. It appears also to be sufficient to allege that the defendant on such a day entered and disseised the prosecutor, without adding the words *then and there* to the disseisin, Cro. Jac. 41, 151. An indictment for a forcible detainer is good without shewing that the defendant’s original entry was peaceful, Cro. Jac. 19. But it seems clear that an entry must be shewn as the act would not apply if the party had been always in possession. Hawk. b. 1. c. 64. s. 40. It seems to have been left doubtful whether an

Indictment.

[\*1123]

indictment, stating that the defendant entered and disseised, without saying whether the entry was peaceable or violent, is good, Cro. Eliz. 915. though, on principle, it appears to be defective as charging no specific offence. And it is clear that repugnancy in stating the charge will vitiate; as if, in an indictment on 8 Hen. VI. setting forth that the defendants peaceably entered and then and there with force and arms disseised the prosecutor; or if it set forth a disseisin of land then and still being the freehold of the party grieved; for it appears that he always remained in possession, in which case there can have been no disseisin, Alleyn. 50. 2 Rol. Rep. 311. It is said that forcible detainer need not be laid as against the peace; but it is not usual to omit this allegation. Cro. Jac. 32, 151.

**Plea.**

*Plea.*—A person indicted of a forcible entry may delay the award of execution by traversing the force, or by plea of three years' possession. 1 Ld. Raym. 440. When the proceedings are removed into the king's bench by certiorari, the defendant must plead *instanter*.

**Award of Restitution.**

*Award of restitution.*—As to award of restitution, see Hawk. b. 1. c. 64. s. 45 to 66. If the defendant be unjustly put out of possession, the court of king's bench will make re-restitution of the lands, Cro. Jac. 151. Alleyn 50.

[\*1124]  
For a forcible entry and detainer at common law,  
(a)

That\* A. B. late of, &c. and C. D. late of, &c. together with divers other evil disposed persons, and disturbers of the peace of our said lord the king, to the number of six and more, whose names to the jurors aforesaid are as yet unknown, on, &c. with force and arms, *and with a strong hand*, (b) unlawfully, violently, forcibly, and injuriously did enter into, &c. [*state the premises according to the fact,*] (c) then and there being in the peaceable possession of one E. F. (d) and situate and being in the parish aforesaid, in the county aforesaid; and that the said A. B. and C. D. together with the said other evil disposed persons, then and there with force and arms, *and with a strong hand*, unlawfully, violently, forcibly and injuriously did expel, amove, and put out the said E. F. from the possession of the said premises with the appurtenances, and the said E. F. so as aforesaid expelled, amoved, and put out from the possession of the same with force and arms, *and with a strong hand*, unlawfully, violent-

(a) See similar precedents Starke 422. Cro. C. C. 199. 8 T. R. 357.

(b) This allegation or some words equivalent to it, are essential 8 T. R. 357.

(c) The same certainty of description is requisite as in a declaration in ejectment.

(d) It must be shown who was actually in possession. 1 Sess. Cas. 359.



ly, forcibly and injuriously have kept out from the day and year aforesaid, until the taking of this inquisition, and still do keep out, and other wrongs to the said E. F. then and there did, to the great damage of the said E. F. and against the peace, &c.

That C. P. late of, &c. T. C. late of, &c. together with divers other evil disposed persons, and disturbers of the peace of our said lord the king, to the number of ten and more, whose names to the jurors aforesaid are as yet unknown, on, &c. with force and arms, and with a strong hand, at, &c. aforesaid, into one shop, one warehouse, and one stable, being parcel of the dwelling house of one L. H. widow, there situate, unlawfully, violently, forcibly and injuriously did enter, the said shop, warehouse and stable, then and there being in peaceable possession of one R. F. and situate and being in the parish aforesaid, in the county aforesaid, and him the said R. F. from the possession of the same premises with force and arms, and with a strong hand, then and there unlawfully, violently,\* forcibly and injuriously did expel, put out and remove from the possession of the said premises, with the appurtenances, and him the said R. F. so as aforesaid expelled, put out and removed from the possession of the said premises on the day and year above mentioned, and continually afterwards, until the day of taking this inquisition, with force and arms, and with a strong hand, at, &c. aforesaid, did unlawfully, violently, forcibly and injuriously keep out, and still do keep out, and other wrongs to the said R. F. then and there did, to the great damage of the said R. F. and against the peace of our said lord the king, his crown and dignity.

Indictment at common law for forcible entry and expulsion from possession. (e)

[\*1125]

Westmorland. That A. I. late of, &c. on, &c. and before and at the time of committing of the offence hereafter mentioned, was possessed of a certain messuage with the appurtenances, situate, lying and being in, &c. aforesaid, for a certain term of years, then and still to come and unexpired, and being so possessed thereof, one A. O. late of, &c. afterwards to wit, on the said &c. into the same messuage, with the appurtenances aforesaid, in, &c. aforesaid, with force and arms, and with strong hand unlawfully did enter, and the said A. I. from the peaceable possession of the said messuage with the appurtenances aforesaid, then and there with force and arms, and with strong hand unlawfully did expel and put out, and the said A. I. from the possession

For a forcible entry and detainer on the statutes. (f)

(e) See precedents, Cro. C. C. 362. 8 T. R. 357. 2 Starkie 422. see general note ante 1102 to 1122.

Burn. J. Forcible Entry. 4 Wentw. 404. Cro. C. C. 200. Burn. J. Forcible Entry. Starkie, 425. and general note ante 1120 to 1122.

(f) See similar precedents,

thereof so as aforesaid, with force and arms, and with a strong hand, being unlawfully expelled and put out, the said A. O. him the said A. I. from the aforesaid, &c. until the day of the taking of this inquisition from the possession of the said messuage, with the appurtenances aforesaid, with force and arms, and with strong hand unlawfully and injuriously then and there did keep out, and doth still keep out, to the great damage of the said A. I. against the peace, &c. and against the form of the statute in that case made and provided.

For a forcible entry into a freehold, 1st. 5. and 15. R. 2. (g)

[\*1126]

That A. B. late of, &c. and C. D. late of, &c. together with divers other evil disposed persons, and disturbers of the peace of our said lord the king, whose names to the jurors aforesaid are as yet unknown, on, &c. with force and arms, and with a strong hand did enter into, &c. [*here state the premises according to the fact,*] then and there being the freehold of E. F. and then being in the tenure and occupation of one G. H. and did then and there with force and arms, unlawfully with a strong hand, and without judgment\* recovered disseise the said E. F. and expel and eject the said G. H. from his possession of the same, and with force and arms unlawfully, and with a strong hand, from the day and year aforesaid, until the taking of the inquisition, have kept out and still do keep out the said E. F. so disseised as aforesaid, and the said G. H. so ejected and expelled as aforesaid from the said premises, with the appurtenances, against the form of the statute, &c. and against the peace, &c.

At common law for entering a public house, making a noise therein, and threatening bodily harm to the owner thereof. (h)

Worcestershire. That B. late of, &c. being an evil disposed person, and of a furious quarrelsome and turbulent disposition, on, &c. that is to say, about the hour of eight in the night of the same day, with force and arms, at, &c. aforesaid, unlawfully did enter into the dwelling house of one R. N. there situate, (the same being a public victualling house, and in which divers liege subjects of our said lord the king were then and there peaceably met and assembled) with the intention to disturb the peace of our said lord the king, and that he the said A. B. so being in the said dwelling house, did then and there unlawfully, wilfully, injuriously and obstinately remain there for a long space of time, that is to say, for the space of one hour and more. without the licence and against the will of the said R. N. and did then and there unlawfully, obstinately and injuriously refuse to depart and

(g) See a similar precedent, Trem. P. C. 192. Starkie, 423. 6 Wentw. 403. Indictment for a forcible entry to the damage of a person seised of and in five undivided parts of a freehold, 4 Wentw. 150.—for a forcible entry against twelve, 6

Wentw. 428. and see general note ante 1120 to 1122.

(h) See a similar precedent Cro. C. 4. 15. 2 St. 396. and see ante ch. 9. for indictments for riots in dwelling houses, &c.

go away from and out of the said dwelling house, upon the reasonable request of the said R. N. then and there made to him for that purpose ; and that the said A. B. did then and there unlawfully, vehemently and turbulently menace and threaten great bodily hurt to the said R. N. then and there being in the said dwelling house, and did then and there make a great noise in disturbance of the peace of our said lord the king, and greatly misbehave himself in the same dwelling house, and other wrongs to the said R. N. then and there did, to the great damage of the said R. N. to the great terror of the said liege subjects, in violation of the good rule and order observed by the said R. N. within the said dwelling house, to the evil example, &c. and against the peace, &c.  
[*Add a count for a common assault.*]

## CHAPTER XVII.

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### FOR OFFENCES RELATIVE TO SHIPS AND SEA. (a)

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#### PIRACY.

The of-  
fence.  
[\*1127]

Piracy,\* in its most extended sense, is the committing such illegal acts on the high seas, as would, if committed on shore, be felonious. Hawk. b. 1. c. 37. s. 4. It is derived from the Greek *πῆρσις*, which signifies to pass over the sea, and refers, therefore, rather to a place, than a species of crime. 3 Inst. 113. The enquiry, therefore, relates chiefly to the extent of the admiral's jurisdiction, within which cases of marine felonies may arise. Formerly it seems to have been thought that the court of king's bench exercised a concurrent jurisdiction with the admiralty over narrow seas, and on the coast, though regarded as the high seas, 2 Hale, 13. It is, however, clear, that the admiral never had jurisdiction in any river, creek, or harbour, within the body of any county, unless by some particular provision, as on 15 Rich. II. c. 3 in case of mayhem and homicide. The only question of difficulty is how to settle the limits between the high seas and the county on which they border. In general, it appears that such narrow seas, rivers, or creeks, are deemed to be within the bodies of counties, where persons on one side can see what is done on the\* other, 2 Hale, 16, 54. Hawk. b. 2. c. 9.

{\*1128]

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(a) As to the offence, see in general 3 Inst. 111 to 114. 1 Hale, 254, 5. Hawk. b. 1. c. 37. Com. Dig. Admiralty, A. 3. Bac. Abr. Piracy, 2 East, P. C. 792 to 812. 2 Bla. Com. 71, 2. Williams J. Piracy.

s. 14. And the admiral can have no power over offences committed in any place of this description, merely because it is subject to the changes of tide, except by statute, 3 Inst. 113. On the open sea shore between high and low water mark, the admiralty and the common law have a concurrent jurisdiction, 2 Hale, 17. 3 Inst. 113. In harbours and below the bridges in large rivers partly inclosed it is often more a question of fact than of law, to be decided on local evidence. As to the commission and jurisdiction of the admiralty court in general, see ante 1 vol. 151 to 156.

But in its narrower and more popular sense, piracy signifies the stealing or otherwise illegally using every kind of shipping on the high seas. It differs from other offences in this; that a subject of another realm, who owes, even for a time, no obedience to our laws, is liable to their operation. For the crime of robbery on the high seas, is an offence against the universal law of society, and constitutes the criminal, in the language of Lord Coke, "*hostis humani generis*." It is, therefore, observed by Mr. Justice Blackstone, "that as he has renounced all the benefits of society and government, and has reduced himself to the savage state of nature, by declaring war against all mankind, all mankind must declare war against him:" so that he infers each community has a right in its own defence, to punish him.

Piracy, if committed by a subject, was formerly holden to be a species of treason, as against the allegiance of a subject; and to amount to no more than felony in an alien, 3 Inst. 113. But since the 25 Edw. III. c. 2. it is no longer regarded as traitorous. Its punishment has been provided for by 28 Hen. VIII. c. 15. together with other felonies committed at sea in the manner which has been shown already. And several statutes have made other acts of violence capital felonies under the name of piracy.

But previous to 11 and 12 W. III. c. 7. none were deemed pirates who captured vessels under authority from a foreign power. But by that statute it is enacted, that "if any of his majesty's natural born subjects or denizens of this kingdom, shall commit any piracy or robbery, or an act of hostility against others his majesty's subjects upon the sea, under colour of any commission from any foreign prince or state, or pretence of authority from any person whatsoever," he shall be taken to be a pirate, felon and robber, and guilty of felony without benefit of clergy.—The 2 Geo. II. c. 30. further enacts, "That all natural born subjects or denizens who during any war shall commit any hostilities upon the sea; or in any haven, river, creek, or place, where the admiral, &c. has power, authority, or jurisdiction against his majesty's

[\*1129] subjects,\* by virtue or under colour of any commission from any of his majesty's enemies, or shall be any otherwise adherent, or giving aid or comfort to his majesty's enemies upon the sea, or any haven or places where the admiral has jurisdiction as aforesaid, may be tried as pirates, felons and robbers in the said court of admiralty, on ship board or on the land, in the same manner as persons guilty of piracy, felony and robbery, are, by the said acts directed to be tried," and shall, on conviction, be deemed guilty of felony without benefit of clergy. But this act does not prevent the offender from being tried for high treason within the realm; though if he has once been acquitted on a trial for that offence, he cannot be convicted of piracy, s. 2, 3. And by s. 9. of the same statute, "If any commander or master of any ship, or any seaman or mariner shall, in any place where the admiral hath jurisdiction, betray his trust and turn pirate, enemy, or rebel, and piratically and feloniously run away with his or their ship or ships, or any barge, boat, ordnance, ammunition, goods, or merchandize; or yield them up voluntarily to any pirate, or shall bring any seducing message from any pirate, enemy or rebel; or consult, combine, or confederate with, or attempt or endeavour to corrupt any commander, master, officer, or mariner, to yield up or run away with any ship, goods, merchandizes, or turn pirates, or go over to pirates; or if any person shall lay violent hands on his commander, whereby to hinder him from fighting in defence of his ship and goods committed to his trust, or shall confine his master, or make or endeavour to make a revolt in the ship, he shall be adjudged, deemed and taken to be a pirate, felon, and robber, and a felon without benefit of clergy." The 8 Geo. I. c. 24. further enacts, that "If any commander or master of any ship or vessel, or any other person shall any wise trade with any pirate, by truck, barter, exchange, or in any other manner, or shall furnish any pirate, felon, or robber upon the seas, with any ammunition, provision, or stores of any kind, or shall fit out any ship or vessel knowingly, and with a design to trade with or supply, or correspond with any pirate, felon, or robber on the seas; or if any person shall any wise consult, combine, confederate, or correspond with any pirate, felon, or robber on the seas, knowing him to be guilty of any such piracy, felony and robbery," he shall be guilty of a capital offence. And by the same act, "in case any person belonging to any ship or vessel whatsoever, upon meeting any merchant ship or vessel on the high seas, or in any port, haven, or creek whatsoever, shall forcibly board or enter into such ship or vessel, and though they do not seize or carry off such ship or vessel, shall throw overboard, or destroy any part of the goods or merchandizes belonging or



such\* ship or vessel," he shall be deemed and punished as a pirate. And the 32 Geo. II. c. 25. s. 12. makes it piracy for any commanders of either private ships or vessels of war, commissioned by virtue of 29 Geo. II. c. 34. or that statute, to agree with any neutral for the ransom of a ship taken as a prize, or actually to permit its ransom. Accessories to piracy before the fact, are, by 11 and 12 W. III. c. 7. s. 10. deprived of clergy; and all who receive either the pirate, or the ship, &c. piratically taken, are declared accessories after the fact. The 8 Geo. II. c. 24. s. 14. makes both classes of principal felons, and directs that as such they shall be tried and suffer. [\*1130]

In the construction of the common law as enlarged by these statutes, it appears that for mariners to seize the captain, put him on shore against his will, and afterwards employ the ship for their own use, is piracy 2 East, P. C. 796. But when the master of a vessel insured the ship and cargo, landed the goods, and on the destruction of the former, protested both as lost, with intent to defraud the owners and insurers, this was holden to be a mere breach of trust, and no felony; because there was no determination of the special authority with which the defendant was entrusted, *id. ibid.* And the same rules apply, in the application of the law to particular cases, as prevail in respect to larceny, *id. ibid.*

*Indictment.*—The indictment must charge the offence to be both *feloniously* and *piratically* committed; as well as lay every material fact within the jurisdiction of the admiralty, 3 Inst. 112. Hawk. b. 1. c. 37. s. 15. The crime must be strictly proved to have occurred on the high seas, or the defendant will be entitled to an acquittal. As to the trial, &c. in the admiralty sessions, see 1 vol. 151 to 156. Indictment.

## INDICTMENTS FOR OFFENCES RELATIVE TO SHIPS AND THE SEA, &c.

Admiralty of England. That W. K. late of London, mariner, N. C. late of the same place, mariner, J. H. [eight others with the like addition] on, &c. with force and arms, upon the high sea (m) in a certain place distant about ten leagues from Cutsheen in the

Against several persons for piratically taking and carrying away a ship with its tackle, &c. and certain goods on board the same. (l)

(l) See a similar precedent Cro. C. A. 486. Cro. C. C. 483. Starkie, 455. This indictment was used against Kidd, 5 St. Tr. 287. For indictments for murder committed at

sea see ante 758. 9. and see general note ante 1127 to 1130.

(m) These allegations are material, *supra*.

[\*1131] East\* Indies, and within the jurisdiction of the admiralty of England (*m*) did piratically (*n*) and feloniously (*o*) set upon, board, break and enter a certain merchant ship called the Quedagh Merchant, then being a ship of certain persons to the jurors aforesaid as yet unknown, and then and there piratically and feloniously did assault certain mariners, whose names to the jurors aforesaid are also unknown, in the same ship, and in the peace of God and our said sovereign lord the king then and there being, and did then and there upon the high sea aforesaid, in the place aforesaid and within the jurisdiction aforesaid, piratically and feloniously put the said mariners to the jurors aforesaid as yet unknown, so being in the same ship, in great bodily fear and danger of their lives; and the said merchant ship called the Quedagh Merchant, and the apparel and tackle of the same ship of the value of four hundred pounds of lawful money of Great Britain, together with 70 chests of opium of the value of 1400*l.* of like lawful money, then being in and on board the same ship, of the goods and chattels of certain persons to the jurors aforesaid as yet unknown; and then and there upon the high sea aforesaid, in the place aforesaid, and within the jurisdiction aforesaid, being under the care and custody, and in the possession of the said mariners, (to the jurors aforesaid as yet unknown,) they the said W. K. N. C. &c. [*the names of all the defendants*] with force and arms, from the care, custody and possession of the said mariners to the jurors aforesaid as yet unknown, then and there, to wit, upon the high sea aforesaid, in the place aforesaid, and within the jurisdiction aforesaid, piratically, feloniously and against the will of the said last mentioned mariners, did steal, take and run away with, against the peace, &c.

For piracy on stat. 11. and 12. W. 3. c. 7. s. 9. by causing a revolt in a merchant ship and running away with the same, and the apparel, tackle and goods thereof.  
(*p*)

Second count for [\*1132]

That E. J. late of, &c. N. W. late of, &c. and L. S. late of, &c. on, &c. with force and arms upon the high sea, within the jurisdiction of the admiralty of England, about half a league distant from Leghorn in Italy, in parts beyond the seas; then being mariners in and on board a certain merchant ship called the Dove, belonging and appertaining to subjects of our said lord the king (to the jurors aforesaid as yet unknown,) whereof one B. H. a subject of our said lord the king then and there was master, piratically and feloniously did endeavour to make and did make a revolt in the same ship, (the said B. H. then and there being master of the same ship as aforesaid) against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said E. J. and L. S. on the said, &c. then being subjects of our said lord\* the king and mariner

(*n o*) These words are essential, Hawk. b. 1. c. 37. p. 15. ante 1130.

(*p*) See a similar precedent, Cro. C. C. 382.

in the said ship called the Dove, belonging and appertaining to subjects of our said lord the king to the jurors aforesaid, as yet unknown, with force and arms upon the high sea aforesaid, about half a league distant from Leghorn aforesaid, in and on board the said ship called the Dove, whereof the said B. H. a subject of our said lord the king then and there was master as aforesaid, did betray the trust in them reposed as mariners of the same ship, and then and there upon the high sea aforesaid, within the said jurisdiction, with force and arms did turn pirates, and the same ship and the apparel and tackle thereof, of the value of two hundred pounds of lawful money of Great Britain, and one hundred hogsheads of sugar of the value of 100*l.* of like lawful money, 150 bales of tobacco of the value of 100*l.* and two bales of velvet of the value of 150*l.* of like lawful money, of the goods and chattels of certain subjects of our said lord the king to the jurors aforesaid as yet unknown, then and there being in the same ship under the care and custody, and the possession of the said B. H. as master of the said ship then and there upon the high sea aforesaid, within the jurisdiction of the admiralty aforesaid, about the distance of half a league from Leghorn aforesaid, with force and arms, from the care, custody and possession of the said B. H. piratically and feloniously did steal, take and run away with, (they the said E. J., N. W. and L. S. then and there being mariners of the said ship, and on board the said ship on the high sea as aforesaid,) against the form of the statute, &c. and against the peace, &c.

stealing  
and run-  
ning away  
with ship,  
tackle, &c.

Admiralty of England, to wit. The jurors, &c. that C. D. late of, &c. mariner, and E. J. late of the same place, mariner, on, &c. with force and arms, upon the high seas within the jurisdiction of the admiralty of England, (i. e.) about the distance of, &c. from, &c. they the said C. D. and E. F. then and there being respectively subjects of our said lord the king, and mariners in and on board of a certain brig or vessel, called, &c. and then belonging and appertaining to A. B. being also then and there a subject of our said lord the king, and whereof one G. H. being also a subject of our said lord the king, then and there was master, did betray the trust in them reposed as such mariners, and did then and there with force and arms, unlawfully turn pirates; and that the said C. D. and E. F. then and there upon the high seas aforesaid, and within the jurisdiction aforesaid, with force and arms piratically and feloniously did steal, take and run away, with a certain boat,

Running  
away with  
ship's  
boat. (g)

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(g) From the MS. of a gentleman at the bar.

[\*1133]

and the tackle, apparel and furniture thereof, of the value of — of lawful,\* &c. [*here set out the goods and the value of them,*] of the goods and chattels of the said A. B. then and there found, and being in the said brig or vessel, contrary to the form of the statute, &c. and against the peace, &c. [*second count stating the brig, &c. to be the property of persons to the jurors aforesaid unknown.*]

Against a seaman for running away with a boat belonging to a ship under the command of one of his majesty's subjects. (r) First count, stating the culprit to be a mariner belonging to a ship, &c.

That J. H. late of, &c. on, &c. upon the high sea within the jurisdiction of the admiralty of England, to wit, upon a certain part of the high sea, about the distance of one league from and on the coast of G. in Africa, in parts beyond the seas, then being a subject of our said lord the king, and a mariner belonging to a certain merchant ship called the Plumper, then and there belonging and appertaining to certain subjects of our said lord the king, to the jurors aforesaid as yet unknown; whereof one E. B. a subject of our said lord the king then and there was master, and then and there also being in and on board a certain boat belonging to the said ship, with force and arms, did betray the trust in him the said J. F. reposed as such mariner as aforesaid, and then and there, to wit, upon the said part of the high sea aforesaid, and within the jurisdiction aforesaid, with force and arms did turn pirate, and the same boat, and the apparel, tackle and ammunition thereof, of the value of 30*l.* of lawful money of Great Britain, of the goods and chattels of certain subjects of our said lord the king, to the jurors aforesaid as yet unknown, then and there being under the care and custody, and in the possession of the said E. B. as master of the same ship, &c. the said J. F. then and there, to wit, upon the said part of the high sea aforesaid, and within the jurisdiction aforesaid, with force and arms, from the care, custody and possession of the said E. B. piratically and feloniously did steal, take and run away with, he the said J. F. then and there being such mariner as aforesaid, against the form of the statute, &c. and against the peace, &c.

For an assault on the captain of a ship with an intent to murder him, by some of his crew who had mutinied against him. (s)

Admiralty of England. The jurors for our said lord the king present, that C. T. late of, &c. W. L. late of, &c. and W. M. late of, &c. on, &c. were severally and respectively mariners on board of and belonging to a certain ship called the Walker, then sailing and being on the high sea, within the jurisdiction of the admiralty of England, to wit, about the distance of four leagues from the Galipagos isles in the Pacific ocean, of the Western coast of South America; and

(r) See a similar precedent Cro. C. A. 188. 4 Wentw. 50. and precedents ante 1130 to 1133, and general note ante 1127 to 1130

(s) This was the indictment against Thompson and others, A. D. 1801, by an eminent crown lawyer.

that J. N. was then and there master and commander of and on board of the said ship; and that the said C. T., W. L.\* and W. M. being persons of a wicked, malicious, cruel, [\*1134] savage, rebellious and mutinous disposition, on the said, &c. on the high sea aforesaid, within the jurisdiction aforesaid, to wit, about the distance of four leagues from the aforesaid isles, in and upon the said J. N. so then and there being on board of, and master and commander of the said ship, of which they the said C. T., W. L. and W. N. then and there respectively were mariners as aforesaid, unlawfully, violently, maliciously, cruelly and mutinously did make an assault, with a wicked and diabolical intent, him the said J. N. then and there feloniously, wilfully, and of their malice aforethought, to kill and murder; and that the said C. T. with a certain drawn cutlass, which he the said C. T. in his right hand then and there had and held, him the said J. N. did strike, cut, penetrate and wound, giving to him the said J. N. one dangerous wound on the head of him the said J. N. of the length of four inches and the depth of one inch, and one other dangerous wound on the left shoulder of him the said J. N. of the length of six inches and the depth of three inches; by means of which said wounds the life of the said J. N. was then and there greatly endangered; and he the said J. N. then and there suffered great anguish and loss of blood, and continued sick, weak and languid for a great length of time, to wit, for the space of six weeks then next ensuing, and other wrongs to the said J. N. then and there did, to the great damage of the said J. N. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said C. T., the said W. L. and the said W. M. afterwards, to wit, on the same day and year aforesaid, with force and arms, on the high sea aforesaid, to wit, within the distance of four leagues from the aforesaid isles, in and upon the said J. N. in the peace of God and our said lord the king then and there being, then and there did make another violent and cruel assault, and him the said J. N. then and there did beat, bruise, wound and ill-treat, so that his life was then and there greatly despaired of, and other wrongs to the said J. N. then and there did, to the great damage of the said J. N. to the evil example, &c. and against the peace, &c.

Second  
count

Admiralty of England. The jurors, &c. that E. T. late of, &c. mariner, and N. W. late of the same, mariner, after the twenty-fourth\* day of June, in the year of our lord one thousand seven hundred and eighteen to wit, on, &c. with force and arms, upon the high seas within the jurisdiction of the admiralty of England, about half a league distant from Leghorn in Italy, in parts beyond the seas, then being mariners

[\*1135]  
For felony  
in the ad-  
miralty  
court, on 4  
Geo. I. c.  
12. s. 3.  
for wilful-  
ly burning

and destroying a ship, having merchandize on board. (t)

The like against two persons for making holes in and sinking a ship to defraud underwriters. (u)

For stealing from a ship wrecked in Wales.

(w)

[\*1136]

belonging to a certain merchant ship called the Dolphin, and then and there being in and on board the said ship, did then and there wilfully and feloniously burn and destroy the said ship, and direct and procure the said ship to be burnt and destroyed, to the great prejudice of divers persons, merchants, (to the jurors aforesaid as yet unknown) that had laden goods thereon, against the form of the statute, &c. and against the peace, &c.

Admiralty of England. That W. C. and J. R. on the 8th of August in the — year, &c. upon the high seas, within the jurisdiction of the admiralty of England, were on board a vessel called the Adventure, whereof C. was the master, and belonging to the same; and R. an officer belonging to the same, which vessel was insured for 700*l.* by R. S. and (certain other underwriters by name,) who had before that time severally underwritten a policy of insurance on such vessel: and that C. and R. with force and arms, on, &c. on the high seas, within the jurisdiction aforesaid, &c. wilfully and feloniously made divers holes in and through certain parts of the vessel, by means whereof the sea entered, filled and sunk the said vessel, and that C. and R. so respectively being such master and officer belonging to the said vessel, thereby wilfully and feloniously destroyed the said vessel, to which they, C. and R. so respectively belonged, with a wicked and dishonest intent and design to prejudice the said R. S. &c. who had so underwritten the said policy of insurance on the said vessel, and were severally and respectively insurers on the said vessel, against the form, &c. and against the peace, &c.

[*Herefordshire being the next adjoining shire within that part of\* Great Britain called England, (where the king's writ*

(t) See precedents Cro. C. C. 7th Ed. 700. and another form Cro. C. C. 443. and next precedent. The offence is founded on 4 Geo. I. c. 12. s. 3. which enacts, that "if any owner of, or captain, master mariner, or other officer belonging to any ship shall wilfully cast away, burn, or otherwise destroy the ship of which he is the owner or unto which he belongeth, or in any manner or wise direct or procure the same to be done to the prejudice of any person or persons that shall underwrite any policy or policies of insurance thereon, or of any merchant or merchants that shall load goods thereon," he shall be guilty of felony without benefit of clergy. This statute is re-enacted by 11 Geo. I. c. 29. s. 6. which also provides that if any such offence

shall be committed within the body of any county within this realm, the offender shall be tried in such county as other cases of felonies are tried and, if the offence shall be committed on the high seas, the same shall be tried in such manner as by 28 Hen. VIII. c. 15. is directed.

(u) See Cro. C. C. 8 ed. 443. and last precedent and note, and general note ante 1127 to 1130. and see 4 Geo. I. c. 12. s. 3. 12. Ann, St. 2. c. 18. 11 Geo. I. c. 29. s. 6. 39 Geo. III. c. 37.

(w) See similar precedents Cro. C. C. 477. Cro. C. A. 510. 4 Wentw. 54. 6 Wentw. 375. Starkie, 451. By 26 Geo. II. c. 19. s. 1. it is made capital to plunder, steal or destroy any goods or merchandizes, or other effects from or belonging to



*runneth) to the county of Glamorgan in Wales, to wit, (x)]* that on, &c. a certain ship called the Catherine, the property of a person or persons to the jurors as yet unknown, was stranded in his majesty's dominions, to wit, at, &c. and that W. H. late of, &c. then and there, to wit, on the same day and year aforesaid, with force and arms at, &c. aforesaid, wilfully and feloniously did plunder, steal, take away and destroy twenty pounds weight of cotton of the value of twenty shillings, then and there being certain goods and merchandizes the property of a person or persons to the jurors aforesaid as yet unknown, from and belonging to the said ship called the Catherine, so then and there being stranded as aforesaid, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that the said W. H. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, twenty pounds weight of cotton of the value of twenty shillings, then and there being certain goods and merchandizes, the property of a person or persons to the jurors aforesaid as yet unknown, from and belonging to a certain ship or vessel called the Catherine, belonging to a person or persons to the jurors aforesaid as yet unknown, then and there being in distress within his majesty's dominions, to wit, at, &c. aforesaid, then and there feloniously did plunder, steal, take away and destroy, against the form of the statute, &c. and against the peace, &c. And the jurors, &c. do further present, that afterwards, to wit, on the said, &c. a certain ship called the Catherine, the property of a person or persons to the jurors aforesaid as yet unknown, was wrecked in his majesty's dominions, to wit, at, &c. aforesaid, and that the said W. H. then and there, to wit, on the same day and year aforesaid, with force and arms at &c. aforesaid, feloniously did plunder, steal, take away and destroy twenty pounds weight of cotton of the value of twenty shillings, of the goods and merchandizes of a person or persons to the jurors aforesaid as yet unknown,\* from and belonging to the said ship called the Catherine, so then and there being wrecked as aforesaid, against the form of the statute, &c. and against the peace,

First  
count,  
stating the  
ship to  
have been  
stranded.

Second  
count,  
stating the  
ship to  
have been  
in distress  
within his  
majesty's  
domi-  
nions.

Third  
count,  
stating it  
to be  
wrecked,  
&c.

[\*1137]

any ship or vessel of his majesty's subjects or others, which shall be in distress or which shall be wrecked, lost, stranded or cast on shore in any part of his majesty's dominions whether any living creature be on board or not or any of the furniture tackle, apparel, provision, or part of such ship or vessel;" but where the goods are of small value, and stolen without cruelty, outrage or vio-

*Crim. Law.*

lence, the offender may be prosecuted as for petit larceny, see ante.

(x) The venue may be laid in the adjoining county when the offence is committed in England: when, as in this case in Wales, it must be the next English county, 26 Geo. II. c. 19. s. 8. As to what is deemed the next county of England, see 1 vol. 185.

VOL. III.

4 B.

Fourth  
count.  
stating it  
to be  
stranded  
and cast  
on shore,  
&c.

For felo-  
ny, on 24  
Geo. II.  
c. 45. for  
stealing  
to the va-  
lue of for-  
ty shil-  
lings in a  
ship, &c.  
on a navi-  
gable ri-  
ver. (y)

&c. And the jurors, &c. do further present, that afterwards, to wit, on the said, &c. a certain ship called the Catherine, the property of a person or persons to the jurors aforesaid as yet unknown, was stranded and cast on shore in his majesty's dominions, to wit, at, &c. aforesaid, and that the said W. H. then and there, to wit, on the same day and year aforesaid, with force and arms, at, &c. aforesaid, feloniously did plunder, steal, take away and destroy twenty pounds weight of cotton of the value of twenty shillings, of the goods and merchandizes of a person or persons to the jurors aforesaid as yet unknown, from and belonging to the said ship called the Catherine, so then and there being stranded and cast on shore as aforesaid, against the form of the statute, &c. and against the peace, &c.

That A. B. late of, &c. on, &c. with force and arms, at, &c. aforesaid, twenty pounds weight of indigo, of the value of fifty shillings, of the goods, wares and merchandize, (or "goods and chattels,") of C. D. and E. F. then and there being in a certain ship called the Nymph, upon the navigable river of Thames, and then and there found, feloniously did steal, take and carry away, against the peace, &c.

(y) See similar precedents Cro. C. C. 444. Starkie, 452. See the statute recited, ante 940. money is holden not to be included in its language, 1 Leach, 52, 3. 2 East, P. C. 647. The statute is confined to such goods as are usually lodged in ships or on wharfs or quays, id. ibid. Fost. 79. An averment that the offence

was committed on the navigable river Thames, is not supported by evidence that it was committed on the banks of one of its creeks, for though the offence is within the act, it should be described in the appropriate words of the act, Leach, 317. 2 East, P. C. 647.

## CHAPTER XVIII.

### CONSPIRACY. (z)

#### PRELIMINARY NOTES.

*Offence.\** The definition of conspiracy in the old books is much too narrow for the construction of this offence in modern times. Lord Coke describes it as “a consultation and agreement between two or more, to appeal or indict an innocent person falsely and maliciously, whom accordingly they cause to be indicted or appealed; and afterward the party is lawfully acquitted by the verdict of twelve men,” 3 Inst. 143. Hawkins, indeed, disputes this last clause, and maintains that a writ of conspiracy might be supported, though there was no acquittal by verdict, Hawk. b. 1. c. 72. s. 2. But Blackstone confines the offence to malicious accusation, and enters into the discussion of no other species of confederacy, 4 Bla. Com. 136. In Jacob’s Dictionary also the law is considered with reference only to this particular object, Jac. Dic. Conspiracy. At the present day, however, the meaning of the offence is certainly far more extensive; and although a plan to indict an innocent person is one of the worst kinds of conspiracy, the offence is manifestly by no means confined to this alone. We will briefly consider it, first as to the *object* which may render a combination criminal, and secondly the *means* by which it must be attempted. [\*1138]

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(x) See in general, 3 Inst. 143. Hawk. b. 1. c. 72. Com. Dig. Justices of the Peace, B. 107. Bla. Com. 136, 7. Burn. J. Conspiracy. Williams J. Conspiracy. Dick. J. Conspiracy. The indictments and notes on this offence are placed last in order, because it is not itself a specific crime belonging to any individual class, but rather appertains to every description of offence to which it leads.

[\*1139]

There can now be no doubt that a combination to prosecute a party known to be guiltless, is indictable, at whatever stage the scheme is rendered abortive. This seems to be implied in the old statute, 33 Edw. I. st. 2. passed to define who shall be conspirators, which declares that "conspirators be they that do confederate or bind themselves by oath, covenant, or other alliance, that every of them shall aid and bear the other falsely and maliciously to indict or cause\* to indict, or falsely to move or maintain pleas; and also such as cause children within age to appeal men of felony, whereby they are imprisoned and sore grieved; and such as retain men in the country with liveries or fees to maintain their malicious enterprizes; and this extendeth as well to the takers as to the givers; and stewards and bailiffs of great lords, which by their seignory, office, or power, undertake to bear or maintain quarrels, pleas, or debates, that concern other parties than such as touch the estate of their lords or themselves." And even though no indictment has been preferred, or information laid before a magistrate, and the only object proved is to destroy the reputation of an individual, an indictment for conspiracy may be supported, 1 Bla. Rep. 392. Even if the offence imputed by the conspirators to the person against whom their malice is directed, is cognizable only in the ecclesiastical courts, as being the father of a bastard child or lewdness in general, they will be equally liable to be indicted, Salk. 174. It has also been holden that a conspiracy to marry under feigned names for the purpose of setting up a fictitious claim to an estate, is criminal, though no one is, in reality, injured, 1 Leach, 39. In a word, all confederacies wrongfully to prejudice another are misdemeanours at common law, whether the intention is to injure his property, his person, or his character, Hawk. b. 1. c. 72. s. 2.

But the object of conspiracy is not confined to an immediate wrong to particular individuals; it may be to injure public trade, to affect public health, to violate public police, to insult public justice, or to do any act in itself illegal. Thus a combination of journeymen to raise their wages, of wine merchants to vend pernicious liquor, of parish officers to marry paupers, and of any persons to procure the release of a prisoner by fictitious bail, is indictable as a conspiracy, 8 Mod. 11. 2 Ld. Raym. 1179. 6 East, 133. 4 Burr. 2106. It has, however, been holden, that no indictment will lie for conspiring to commit a civil trespass on a preserve to take game, though effected in the night and with destructive weapons, 13 East, 228. There are perhaps, few things left so doubtful in the criminal law, as the point at which a combination of several persons in a common object becomes illegal. Certain it is that there are many cases in which the

act itself would not be cognizable by law if done by a single person, which becomes the subject of indictment when effected several with a joint design, 6 T. R. 636. Thus, in the case of workmen refusing to proceed unless they receive an advance of wages ; it is clear that any one of them might singly act on this determination, but it is criminal when it follows from a plan preconcerted among many, 6 T. R. 636. Each person attending a public theatre has a right to express\* his disapprobation of the piece acted, or a performer on the stage, but if several previously agree to condemn a play or hiss an actor, they will be guilty of conspiring, 2 Campb. 358. (a) An agreement between private individuals to support each other in all undertakings lawful or otherwise, is illegal, 9 Co. 56. A combination between officers in the service of the East India Company to resign is holden unlawful, and such resignation is no determination of the service, 4 Burr. 2472. There are other cases in which, though the act may be morally criminal, it is not illegal except on the ground of conspiracy ; thus the verbal slander of a private individual is not indictable, but it is so where several unite in a scheme to blast his character, 1 Lev. 62. 1 Ventr. 304. In a recent case it was holden, that a combination to raise the price of the funds on a particular day by false rumours, was an indictable offence, 3 M. & S. 67. In every case that can be adduced of conspiracy, the offence depends on the the unlawful agreement, and not on the act which follows it ; the latter is but evidence of the former, 2 Burr. 993. 3 Burr. 1321. This is deducible from all the cases on the question, but what kind of agreement is illegal, seems yet not precisely settled. The decisions do not appear quite in unison even with the points they profess to settle. To combine in raising wages, in resigning commissions, or in expressing disapprobation at a theatre, appear scarcely so detrimental to public tranquillity as a malicious and nocturnal trespass ; and yet the former had been holden to be indictable, and the latter a mere civil injury, 13 East, 228. It was observed, in the *King v. Turner and others*, 13 East, 231. that "all the cases in conspiracy proceed on the ground, that the object of combination is to be effected by some falsity ;" but this appears to be true only respecting the old cases on the writ of conspiracy, where the only idea of the offence was the malicious prosecution of another. It can scarcely apply to instances of public outrage, or of open disapprobation at a theatre. Neither have the decisions confined the offence to cases affecting the public, as has been shewn

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(a) And *Macklin's case*, K. B. ante 459.  
MSS. S. P. and see the precedent,

already. It might be inferred from the decisions, that to constitute a conspiracy, it is not necessary that the act intended should be in itself illegal or even immoral; that it should affect the public at large; or that it should be accomplished by false pretences; and though it is agreed that the gist of the offence is the union of persons, it is impossible to conceive a combination, as such, to be illegal. We can rest, therefore, only on the individual cases decided, which depend, in general, on particular\* circumstances, and which are not to be extended, 13 East, 231.

[\*1141]

It is no excuse for a confederacy, to carry on a malicious prosecution, that the indictment preferred was insufficient, or that the court before which it was taken had no jurisdiction to try it; although, in consequence of these circumstances, the party was never really brought into danger, Hawk. b. 1. c. 72. s. 3. Nor will it avail the defendant that he intended only to give evidence on a trial not then commenced; for the law makes the mere intent, in such a case, criminal. If, however, the principal charge is in progress, it may be proper to apply to the court to defer the judicial investigation of the conspiracy, until that is decided, Hawk. b. 1. c. 72. s. 4. It seems that the production of a false certificate that a highway is in repair, calculated to influence the judgment of the court, is indictable, even though the magistrate bringing it forward has no precise authority to make it, nor the instrument itself any exact legal character, 6 T. R. 619.

2. *The means by which the object of conspiracy must be effected.* The idea of conspiring supposes, at least, two persons implicated in the charge; and therefore, the husband and wife cannot be guilty of an offence of this kind, by any plot formed between them, because they are regarded in law as one person, Hawk. b. 1. c. 72. s. 8. And it is holden, that if all the defendants mentioned in the indictment, except one, are acquitted, and it is not stated as a conspiracy with certain persons unknown, the conviction of the single defendant will be invalid, and no judgment can be passed upon him, Poph. 202. 3. Burr. 1262. 12 Mod. 262. But one conspirator may be tried singly; as if the others had escaped or died before the time of trial, or the finding of the bill, he may be rightly convicted alone, 1 Stra. 193. 2 Stra. 1227. And though the act of conspiring is the gist of the offence, it is not necessary to show an actual association or confederacy, but it may be left to reasonable inference, 1 Bla. Rep. 392. And, therefore, where on an indictment against a master and servants for a conspiracy to destroy the trade of the prosecutor, who was a card-maker, it was shewn that they had at various times, spoiled the cards, the jury were left to infer a



communication between them, and they were accordingly convicted, 1 Stra. 144.

In order to render the offence complete, there is no occasion that any act should be done in pursuance of the unlawful agreement entered into between the parties, 2 Ld. Raym. 1167. 1 Salk, 174. Still less can it be necessary to show that any party was actually aggrieved or defrauded, 1 Leach, 39. For the conspiring is\* the essence of the charge, and if that be proved, the defendant will be convicted. [\*1142]

Besides these constructions of the common law, the 2 and 3 Edw. VI. c. 15. s. 1. subjects workmen conspiring to work only at a certain rate or time, to the forfeiture of ten pounds for the first offence, and, on default in the payment of the fine within six days, suffer twenty days imprisonment, and shall have only bread and water for his sustenance; for the second offence twenty pounds, and, in default, the pillory, and for the third offence forty pounds, or the pillory, loss of an ear, and legal infamy. And the 39 and 40 Geo. III. c. 106. makes journeymen and workmen entering into an agreement to raise wages, &c. liable to three months imprisonment, on conviction before two justices.

*Modes of Prosecution.* The old modes of proceedings in case of conspiracy to indict a man of crime were, first by indictment, and secondly by writ of conspiracy, which was the civil mode of obtaining pecuniary redress, 3 Inst. 143. 1 Saund. 230. n. 1. It appears that, in order to support the latter, it was necessary to shew an actual injury, so as to make out a claim for damages; and also to prove that the party had been lawfully acquitted. It could not therefore, be sustained in cases where the conspiracy had been directed only against the character, Hawk. b. 1. c. 72. s. 2. But this course has given way to the action on the case for a malicious prosecution, or for slander, by which redress may be obtained for any kind of injury whether to the reputation or person, see 1 vol. 835 to 840. The party injured has, therefore, his option either to pursue this course, or to indict; but the latter method is preferable, where pecuniary compensation is not the object, because he may be himself a witness, 5 East, 582. He may indeed institute both, though the court will probably regard this as vindictive. If he prefers it, he may move the King's-bench for a criminal information, but then, in general, he will be compelled to resign his civil remedy, 2 Burr. 719. 2 T. R. 198. Dougl. 466. An indictment for this offence may be tried at the sessions; for justices have cognizance of it, as tending to produce a breach of the peace as much as cheats or libels, 3 Burr. 1320. 1 Bla. Rep. 368. It is one of the offences expressly named in the

Modes of  
prosecu-  
tion.

commission of Oyer and Terminer: see the commission, 4 vol. 134.

Indictment.

[\*1143]

*Indictment.* The *venue* must be laid in the county where the combination took place, and not where the object was carried into execution, 1 Salk. 174. And, as in case of treason, after the forming a plot has been shown in the shire where the venue is laid, acts done by other conspirators in other counties in pursuance of a common design, may be given in evidence, 4 East, Rep. 171. It is\* usual to frame the indictment stating the conspiracy, and then shewing that in pursuance of it, certain overt acts were done; but it is holden sufficient to state the conspiring alone, 2 Ld. Raym. 1167. 1 Salk. 174. And when the object of the combination is to indict the prosecutor, it is not necessary to shew with what particular offence it was intended to charge him, but it will suffice to say that they conspired to indict him of a crime punishable by the laws of this kingdom, and then it may be alleged that they, according to the conspiracy, did indict him, 2 Burr. 993. In such a case there is no occasion to aver the innocence of the party injured, if the conspiracy be laid *falsely*; for he will be presumed guiltless until the contrary appears, 1 Salk. 174. 1 Stra. 193. And where the act is in itself illegal, there is no occasion to state the means by which the conspiracy was effected, 2 Leach, 796. But where the act only becomes illegal from the means used to effect it, so much must be stated as will shew its illegality, and charge the defendant with a substantive offence. Thus, in an indictment for a combination to marry paupers, in order to throw the burden of maintaining them on another parish, it is necessary to show that some threat, promise, bribe, or sinister means was made use of, because the act of marriage, being in itself lawful, the procuring it requires this explanation in order to be charged as a crime, 1 East P. C. 461, 2. It is also material in this case to shew the intent of the combination, by stating that the husband was a pauper, and the wife legally settled in the parish from which she was taken, 8 Mod. 320. 1 Esp. Rep. 306, 7. And, in a conviction of journeymen manufacturers for an illegal agreement on 39 & 40 Geo. III. c. 106. the agreement must be stated, in order that both the object and intent may appear to be criminal, 6. East, 417. The technical words appropriate to the description of the offence are "conspire, combine, confederate and agree together;" but others of the same import seem to be equally proper.

Evidence.

*Evidence.* No direct evidence need be given of the fact of conspiring, though it is the gist of the charge; but it may be collected from the other circumstances of the case, 1 Bla. Rep. 392. 1 Stra. 144.

*New\* Trial, &c.* On a motion for a new trial after conviction, all the defendants must be present, or the court will not entertain it, 11 East Rep. 307. The same rule also applies to a motion in arrest of judgment, 2 Burr. 929. 1 Bla. Rep. 209. But when the indictment is removed into the King's bench by certiorari, and set down for argument, it is not necessary that the defendant should appear in person, because it is in the nature of a special verdict, and his innocence may be presumed still, 2 Stra. 1227. ante 1 vol. 659.

*Punishment.\** The ancient punishment of conspiracy was that called villainous judgment, which was, that the offenders should lose the freedom or franchise of the law, so that they should be disqualified from becoming, in any case, a jurymen or a witness—have their houses, lands and goods, seized by the crown—and, in the language of Lord Coke, “their houses and lands must be estrepped and wasted, their trees rooted up and rased, and their bodies sent to prison, all things retrograde and against order and nature, in destroying all things that have pleased or nourished them,” 3 Inst. 143. But there is no instance of the infliction of this punishment since the time of Edward III. 2 Burr. 996. 1027. At the present day, conspiracy is punishable, like any other misdemeanour, at the discretion of the court in which the offender is convicted, and the penalties are, in many cases, severe. Thus Kinnersley was sentenced to a year's imprisonment, a fine of 500*l.* and to find sureties for his good behaviour for seven years, 1 Stra. 196. And the parties who set on foot the imposture of the Cock-lane Ghost, to accuse an innocent person of murder, were sentenced, one to stand three times in the pillory, and be imprisoned two years, one to be imprisoned one year, and the other to be kept to hard labour for six months in the house of correction, according to their degrees of guilt, 1 Bla. Rep. 401. On conviction of conspiracy the defendant becomes incompetent to give evidence, 1 Leach, 442. but his competence may be restored by a pardon, 1 Hale, 306. 2 Hale, 278.

[\* 1145]

## INDICTMENTS FOR CONSPIRACY.\*

General  
form of an  
indict-  
ment for  
conspira-  
cy.

The jurors for our lord the king upon their oath present, that A. B. late of, &c. [*here state the names and additions of all the defendants,*] being persons of evil minds and dispositions, (*b*) on, &c. with force and arms, at, &c. [*the venue,*] (*c*) unlawfully and wickedly [*or if the conspiracy be malicious, say "falsely and maliciously,"*] did conspire, combine, confederate, and agree together, (*d*) to [*here state the object of the conspiracy, as in the following precedents.*] And the jurors aforesaid, upon their oath aforesaid, do further present, that the said A. B. &c. in pursuance of and according to the said conspiracy, combination, confederacy and agreement, between them the said A. B. &c. as aforesaid had, did, on, &c. at, &c. [*the place where the overt act took place,*] [*here set out the overt acts of conspiracy as in the following precedents,*] to the great damage of, &c. [*the party immediately injured,*] to the evil example of all others, and against the peace of our said lord the king, his crown and dignity. [*Add a second count, stopping at the statement of the conspiracy, omitting the overt acts, and concluding as above.*]

For a con-  
spiracy to  
release a  
man from  
the custo-  
dy of the  
marshal  
by becom-  
ing bail  
under fic-  
titious  
names. (*e*)

That before and at the time of the committing of the offence hereinafter next mentioned, to wit, on, &c. at, &c. W. B. M. late of, &c. was duly arrested by the sheriffs of London, by virtue of a certain writ of our said lord the king to them in this behalf directed, at the suit of R. M. the elder, and R. M. the younger, in a certain plea of trespass on the case, in the court of our said lord the king, before the king himself, wherein the said R. M. the elder and the said R. M. the younger were plaintiffs, and W. P. B. and the said W. B. M. were defendants, and which said writ was duly indorsed and marked for bail in the sum of 1,794*l.* 1*s.* 6*d.* and the said W. B. M. being so arrested, and not being able to procure any sufficient bail to the said writ, was afterwards, to wit, on,

(*b*) This is mere inducement and not material.

(*c*) The venue must be laid where the conspiracy is entered into, not where it takes effect, ante 1142.

(*d*) These are the most usual

words, but others of the same meaning are occasionally used in their stead.

(*e*) This was settled by an eminent crown lawyer, and the parties were convicted, A. D. 1816.

&c. aforesaid, at, &c. aforesaid, duly committed to the custody of\* the marshal of the Marshalsea of our lord the king, [\* 1146], before the king himself, and at the time of the committing the offence hereinafter next mentioned, remained, and was a prisoner in the custody of the said marshal at the suit of the said R. M. the elder, and R. M. the younger, for want of sufficient bail, to wit, at, &c. aforesaid. And the jurors, &c. do further present, that the said W. B. M., J. S. late of, &c. F. S. late of, &c. J. B. late of, &c. and divers other persons to the jurors aforesaid as yet unknown, being evil disposed persons, and wickedly contriving and intending to impede the due course of law and justice, and to deprive the said R. M. the elder and R. M. the younger of the means of recovering their demand against the said W. B. M. and W. P. B. and to cause and procure the said W. B. M. to be released and go at large out of the said custody of the said marshal, wheresoever he would, without causing or procuring any sufficient person or persons to become bail for him the said W. B. M. in the said suit, according to the course and practice of the said court of our said lord the king, before, &c. afterwards, and whilst the said W. B. M. was in such custody as aforesaid, at the suit of the said R. M. the elder and R. M. the younger, to wit, on, &c. at, &c. aforesaid, unlawfully, maliciously, corruptly and wickedly, did conspire, combine, confederate and agree together, by means of false pretences, representations, and swearing, (e) to cause and procure the said W. B. M. to be released out of the said custody, and to go at large wheresoever he would, without having caused or procured any sufficient person or persons to become bail for him the said W. B. M. in the said suit, according to the course and practice of the said court, and without the leave and license and against the will of the said R. M. the elder and R. M. the younger. And the jurors, &c. do further present, that (f) afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, in pursuance of the said conspiracy, combination, confederacy, and agreement, the said J. S. and J. B. offered themselves as bail in the said court for the said W. B. M. in the said suit under false names, that is to say, the said J. B. under the pretended name of C. C. and the said J. S. under the pretended name of T. D. and the said J. B. then and there falsely, fraudulently, and deceitfully represented and pretended to the said court that the residence of him the said J. B. then was

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(e) The means need not, in general, be stated, except where they alone render the design illegal, 2 Leach, 796.

(f) As to the statement of overt acts see 2 Ld. Raym. 1167, 1 Salk. 174.

[\* 1147] in Wood-street, Cheapside, in the city of London, and that he there exercised and carried on the trade and business of a goldsmith\* and jeweller, and the said J. S. then and there did falsely, fraudulently, and deceitfully depose and make oath and affidavit in the said court that he did on Wednesday, the 24th day of November, serve Mr. J. the plaintiff's attorney, with a copy of the said notice of bail as aforesaid, and whereas in truth and in fact neither the said J. B. nor the said J. S. was or are worth the sum of £3588. And the jurors, &c. do further present, that the said W. B. M., J. S., F. S. and J. B. in further pursuance of the said conspiracy, combination, confederacy and agreement, by the means aforesaid, afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, and whilst the said suit was so depending in the said court of our said lord the king, before, &c. did cause and procure the said W. B. M. to be released out of the custody of the said marshal to go wheresoever he would without having caused or procured any sufficient person or persons to become bail for him the said W. B. M. in the said suit according to the course and practice of the said court, and without the leave or license of R. M. the elder or R. M. the younger, in contempt of the said court, to the great damage of the said R. M. the elder and R. M. the younger, to the great hinderance and obstruction of justice, to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said W. B. M., J. S., F. S. and J. B. being such persons as aforesaid, afterwards, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, unlawfully, wickedly, and maliciously did again conspire, combine, confederate, and agree together unlawfully and wrongfully by false swearing and fraudulent and false pretences, and by imposition on the said court, to cause the said W. B. M. then being a prisoner in the custody, &c. at the suit of the said R. M. the elder, and R. M. the younger, in a certain other cause then depending in the said court, wherein the said R. M. the elder and R. M. the younger, were plaintiffs, and the said W. B. M. was defendant, to escape and go at large out of prison without satisfying the said plaintiffs, and without any sufficient bail being put in by the said W. B. M. according to the course and practice of the said court, and the said W. B. M. in pursuance of such last mentioned conspiracy, afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, did, by falsely and fraudulently pretending in the said court that the name of the said J. B. was J. C. and that the name of the said J. S. was J. D. and by the said J. B. and J. S. respectively falsely swearing that they were worth respectively £3588 after payment of their debts, and by the said J. S. falsely

Second  
count.



and corruptly swearing that he had given notice of such bail being justified to W. J. the said plaintiff's attorney in the said last mentioned cause, and by then\* and there justifying the said J. B. and J. S. as bail in the said last mentioned cause under such feigned names as aforesaid, did cause and procure the said W. B. M. to be liberated and go at large out of the custody, &c. without having put in any sufficient bail or in manner justified the said plaintiffs, to the great damage, &c. in contempt, &c. and against the peace, &c. [\* 1148]

That one J. P. heretofore, to wit, on, &c. in Easter term, in the thirty-seventh year, &c. sued and prosecuted out of the court of our said lord the king of the Bench, at, &c. a certain writ of our said lord the king, called a *non omittas capias ad respondendum*, against one J. S. directed to the sheriff of, &c. by which said writ our said lord the king commanded, &c. [*here recite the writ,*] which said writ afterwards and before the delivery thereof to the said sheriff of, &c. to be executed; as hereinafter mentioned, was duly marked and indorsed for bail for fifteen pounds and upwards, by virtue of an affidavit of the cause of action of the said J. P. in that behalf before then made and duly filed of record in the said court of our said lord the king of the Bench, according to the form of the statute in such case made and provided, and which said writ so indorsed afterwards and before the said return thereof, to wit, on, &c. was delivered to C. D. who then and from thenceforth, until and at and after the return of the said writ was sheriff of, &c. to be executed in due form of law, by virtue of which said writ and for having execution thereof he the said C. D. so being sheriff of, &c. as aforesaid, afterwards and before the return of the said writ, to wit, on, &c. duly made his certain warrant in writing under the seal of his office of sheriff of, &c. and bearing date the day and year last aforesaid, and directed to the keeper of the gaol of the said county, and also to J. P. and T. L. his bailiffs, and thereby then and there commanded them, &c. [*recite the warrant,*] which said warrant was then and there duly marked for bail for fifteen pounds and upwards, and which said warrant, so marked for bail, afterwards and before the return of the said writ, to wit, on, &c. last aforesaid, was delivered to the said J. P. then and afterwards being one of the bailiffs and officers of the said sheriff, of, &c. to be executed in due form of law. And the jurors, &c. do further present, that J. F. late of, &c. [*the names and additions of all the defendants,*] contriving and wickedly and maliciously intending to injure, prejudice, and aggrieve the said J. P. so being such bailiff's officer of the said sheriff as aforesaid, and to subject him to an action at the suit

of the said R. F. and to put him to great trouble, charges, and expences of his monies, heretofore, to wit, on, &c. last aforesaid, at, &c. aforesaid, with force and arms, wilfully, wickedly, and maliciously did conspire, combine, confederate, [\* 1149] and\* agree among themselves that the said J. F. should personate the said R. J. and thereby cause the said J. D. to take and arrest him the said R. J. upon and under colour of the said writ and warrant, and that the said R. J. should thereupon commence and prosecute an action of trespass and false imprisonment against the said J. P. and that whatever money should be got from the said J. P. should be divided amongst them the said R. J. &c. And the jurors, &c. do further present, that in pursuance of the said conspiracy, combination, confederacy, and agreement, so as aforesaid had, the said R. J. did afterwards, to wit, on, &c. last aforesaid, within the bailiwick of the said sheriff of, &c. personate the said J. F. and did thereby then and there cause the said J. P. to take and arrest, and the said J. P. did then and there take and arrest the said R. J. by his body, upon and under colour of the said writ and warrant, to wit, &c. aforesaid. And the jurors, &c. do further present, that in further pursuance of the said conspiracy, &c. the said R. J. did afterwards, to wit, in Trinity term, in the thirty-seventh year aforesaid, commence and hath since prosecuted an action of trespass and false imprisonment against the said J. P. and divers other persons, to wit, the said J. L. and one J. C. in the court of our said lord the king, &c. at, &c. to the great damage, &c. in contempt, &c. to the evil and pernicious, &c. and against the peace, &c. [*Second count same as last, laying the object of the conspiracy to be to subject J. P. to an action of trespass at the suit of R. J.*]

For a conspiracy by persons confined in the King's Bench for debt to effect their own escape and that of others. (g) That W. M. late of, &c. [*and other defendants,*] at the time hereinafter next mentioned, were persons lawfully confined in the King's bench prison, situate and being in, &c. aforesaid, being then and there the prison of the Marshalsea of Bench for our said lord the king, before the king himself, and then and there detained in the custody of the marshal of the said prison, that is to say, the said W. M. being then and there lawfully detained in the custody of the said marshal of the said prison, for divers large sums of money, amounting in the whole to a certain large sum of money, to wit, the sum of two thousand pounds of lawful money of Great Britain, by virtue of divers processes in divers actions before those times,

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(g) This precedent is from 4 Wentw. 117. It neither states an overt act, nor that any thing was done in pursuance of the conspiracy; which has been holden sufficient, 1 Salk. 174. 2 Ld. Raym. 1167.

or any of them, commenced against the said W. M. and the said, &c. [*state the cause of the detainer of each of the defendants for debt as above,*] and the said defendants being persons of dangerous and wicked dispositions, and wickedly and unlawfully minding,\* contriving, and intending, as much as in[\* 1150] them lay, to effect the escape of themselves the said defendants, and of divers other persons then and there prisoners lawfully confined in the said prison, and in the custody of the said marshal of the said prison, from and out of the said prison, on, &c. with force and arms, at, &c. aforesaid, did combine, conspire, confederate, assemble, and agree amongst themselves, unlawfully to effect the escape of themselves the said defendants and the said other prisoners then so confined and in the custody of the marshal of the said prison, from and out of the said prison, to wit, at, &c. aforesaid, in contempt of, &c. to the evil example, &c. and against the peace, &c. [*Second count same as the first, except laying the design to be to effect their own escape only, and omitting the causes of detainer.*]

[Commencement of information as ante 6.] That W. K. Information by late of, &c. yeoman, J. B. late of the same place, yeoman, the attorney R. L. late of the same place, yeoman, &c. [*ten others with the ney general like addition,*] at the time hereinafter next mentioned were several against prisoners lawfully confined in the king's bench prison, situate several and being at, &c. aforesaid, then and there the prison of the prisoners for a riot marshalsea of our said lord the king, before the king himself, and conspiracy in and then and there detained in the custody of the marshal the King's Bench prison, and of the said prison; and that the said W. K. &c. [*the defendants*] wickedly minding, contriving, and intending as much as in them lay, to break down, demolish, prostrate, and destroy part of a certain wall of and belonging to, and inclosing the said prison, and thereby unlawfully to effect the escape of themselves the said W. K. &c. and divers other prisoners, thereof then lawfully confined in the said prison, and in the custody with gunpowder. of the marshal of the said prison, from and out of the same, (h) First count for on, &c. aforesaid, at, &c. aforesaid, together with divers a conspiracy and other evil disposed persons, (to the said attorney general as beginning to break yet unknown) did unlawfully and wickedly conspire, combine, down part and evil disposed persons (to the said attorney general as yet of the unknown) did then and there with force and arms, unlawfully and wickedly begin to break down, demolish, prostrate, and destroy part of the said wall, with intent thereby unlawfully to effect the escape of themselves and the said other

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(h) This precedent is abridged from Cro. C. C. 422.

prisoners so then confined in the said prison, and in the custody of the marshal of the said prison, to wit, &c. aforesaid, in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. [*Second count for a riot and beginning to break down part of the wall, omitting the conspiracy.*] And the said attorney general, &c. further gives the court here to understand and be informed, that the said W. K. &c. being such prisoners and in custody as aforesaid, and wickedly minding, contriving, and intending as much as in them lay, to break down, blow up, demolish, prostrate, and destroy a certain other part of the said wall, & placing of and belonging to and inclosing the said prison as aforesaid, and thereby unlawfully to effect the escape of themselves the said W. K. &c. and divers other persons, who then and there were prisoners lawfully confined in the said prison, and in custody of the marshal of the said prison, from and out of the same, afterwards, to wit, on the same, &c. at, &c. aforesaid, together with divers other evil-disposed persons (to the said attorney general as yet unknown,) did unlawfully and wickedly assemble, conspire, combine, confederate, agree, and meet together for the purpose last aforesaid, and being so assembled and met together as last aforesaid, they the said W. K. &c. together with the said other evil disposed persons (to the said attorney general as yet unknown,) with force and arms did then and there unlawfully and wickedly make and cause and procure to be made, a certain large hole or breach in the said wall of the said prison, of great length and width, to wit, six feet in length and six feet in width, and then and there unlawfully and wickedly put, placed, and laid, and caused and procured to be put, placed, and laid, a large quantity of gunpowder, to wit, fifty pounds weight of gunpowder into the said hole or breach so made in the said wall as aforesaid, with intent and in order to set fire to the said gun-powder, and thereby to break down, blow up, demolish, prostrate, and destroy part of the said wall, and by the means last aforesaid, to effect the escape of themselves and the said other prisoners so confined in the said prison, and in custody of the said marshal of the said prison, to wit, at, &c. aforesaid, in contempt, &c. to the evil and pernicious example, &c. and against the peace, &c. [*Fourth count for a conspiracy and beginning to break down part of the wall, like the first, omitting to state their being prisoners. Fifth count for a conspiracy and making a hole in the wall and placing gun-powder, &c. like the second, omitting to state their being prisoners, &c. Sixth count for a riot and beginning to break down part of the wall in order to effect their own escape. Seventh count for a riot, making a hole in the wall and placing gun-powder in it to effect their escape.*]

[\* 1151]

Third

count for

conspiracy

and mak-

ing a hole

in the wall

&amp; placing

gunpow-

der in it,

&amp;c.

*Eighth count for a riot and beginning to break down the wall, in order to make the prison insecure. Ninth count for a riot and placing gunpowder, &c. with the same intention.]*

That heretofore, to wit, on, &c. at, &c. sir W. L. knight, <sup>For a con-</sup> then being one of the aldermen of the said city, and also <sup>spiracy to</sup> one of the justices\* of our said lord the king assigned to keep <sup>persuade a</sup> the peace of our said lord the king within the said city, and <sup>man not to</sup> also to hear and determine divers felonies, trespasses, and <sup>give evi-</sup> other misdeeds committed within the said city, in due form <sup>dence</sup> of law did make a certain warrant of commitment under his <sup>against</sup> hand and seal, bearing date the twenty-ninth day of May, <sup>one com-</sup> in the year of our Lord one thousand eight hundred and <sup>mitted for</sup> one, directed to all and every the constables and other offi- <sup>putting off</sup> cers of the peace for the city of London and the liberties <sup>bad mo-</sup> thereof, whom the said warrant might concern, and to the <sup>ney. (i)</sup> keeper of his majesty's gaol of Newgate; by which said war- <sup>[\* 1152]</sup> rant, the said sir W. L. knight, the justice aforesaid, did in his majesty's name command the said constables and other officers of the peace for the city of London and the liberties thereof, and every of them forthwith, safely to convey and deliver into the custody of the said keeper the body of I. W. he being charged before the said sir W. L. knight, the justice aforesaid, by the oaths of J. D., J. A. J. C. and others, for feloniously and knowingly paying and putting off to the said J. D. two pieces of counterfeit milled money, made in the likeness and similitude of the lawful milled money and gold coin of this realm called an half guinea, and two pieces of counterfeit milled money, made to the likeness and similitude of the lawful milled money and gold coin of this realm, called a seven shilling piece, the same not being cut in pieces at and for a lower rate or value than the same by their denomination did import and were coined and counterfeited for, against the statute, &c. and by which said warrant, the said sir W. L. knight, the justice aforesaid, did require the said keeper to receive the said I. W. and him in his custody safely keep, until he should be discharged by due course of law, by virtue of which said warrant the said I. W. afterwards, to wit, on the said, &c. was conveyed and committed to his majesty's gaol of Newgate for the city of London, for the cause in the said warrant of commitment contained and above specified, to wit, at the parish of St. John

(i) This was the indictment against Brahoney and others, A. D. 1806, obtained from the crown office.—See an abstract of an indictment against a magistrate and others for a conspiracy in producing a false certificate that a road was in repair, 6 T. R. 620, which will be found at length, 4 Wentw. 125 to 146, too long to be inserted here.

Clerkenwell, in the county of Middlesex. And the jurors aforesaid upon their oath aforesaid, do further present, that J. B. late of the said, &c. [*and other defendants,*] together with divers other persons whose names are unknown to the jurors aforesaid, being evil and wicked disposed persons and well knowing the premises aforesaid, and that the said [\* 1153] J. D.\* was a material witness to prove the said offence above specified against the said I. W. and that the said J. D. was bound by recognizance to give evidence against the said I. W. for the said offence, and that the said J. D. intended and designed to appear and give such evidence as he knew touching the said offence, upon a bill of indictment intended to be preferred at the then next session of oyer and terminer, to be holden in and for the said city of London against the said I. W. for the said offence specified and contained in the said warrant, and contriving and intending to obstruct and prevent the due course of law and justice, and wickedly and unjustly to prevent the said I. W. from being convicted of the said offence, and that he might evade justice and go unpunished for the same, and as much as in them lay to suppress the evidence of the said I. D. and to prevent him from attending and giving evidence in such bill of indictment intended to be preferred as aforesaid; afterwards and whilst the said I. W. was in custody and remained a prisoner in the gaol of Newgate by virtue of the warrant aforesaid, and before any indictment had been preferred against the said I. W. for the offence aforesaid, to wit, on, &c. at, &c. unlawfully and wickedly did conspire, combine, confederate, and agree together to solicit and persuade, and to attempt and endeavour to induce the said J. D. to leave London, and go into and remain in the country during the time of holding the then next session of oyer and terminer in and for the said city of London; and not to appear to give evidence as a witness on any bill of indictment that should be preferred at the said then next session against the said I. W. for the offence above mentioned. And the jurors, &c. do further present, that the said J. B. &c. in pursuance of and according to the conspiracy, combination, confederacy, and agreement between them so as aforesaid, before and afterwards, to wit, on the said, &c. at, &c. aforesaid, unlawfully and wickedly did solicit and persuade, and attempt and endeavour to induce the said J. D. to leave London, and go into and remain in the country during the time of holding the then next session of oyer and terminer, in and for the said city of London; and not to appear to give evidence as a witness on any bill of indictment that should be preferred at the said then next session against the said I. W. for the offence above mentioned, and did then and



there promise to the said J. D. that if he would keep out of the way during the time of the said session, he would be well rewarded for it. And the jurors, &c. do further present, that the said J. B. &c. in further pursuance of and according to the conspiracy, combination, confederacy, and agreement between them the said J. B. &c. so as aforesaid before had, afterwards, to wit, on the same day and year last aforesaid, at, &c. last aforesaid,\* unlawfully and wickedly [\* 1154] did propose to the said J. D. to give him the said J. D. five guineas to leave London during the then next session of oyer and terminer, to be held for the said city of London. And the jurors, &c. do further present, that the said J. C. and J. M. in further pursuance of and according to the conspiracy, combination, confederacy, and agreement between them the said J. B. &c. so as aforesaid before had, afterwards, to wit, on the same day and the year last aforesaid, at, &c. last aforesaid, in order to induce and enable the said J. D. to leave London, and absent himself from the said then next session of oyer and terminer, to be held for the said city of London, unlawfully and wickedly did promise and agree to purchase and pay for the discharge of the said J. D. from the East London militia, the said J. D. then and there being a private soldier in the said militia; and did then and there attempt and endeavour to procure the discharge of the said J. D. from the said militia. And the jurors, &c. do further present, that the said E. B. and J. C. in further pursuance of and according to the conspiracy, combination, confederacy, and agreement between them the said J. B. &c. so as aforesaid before had, afterwards, to wit, on the same day and in the year last aforesaid, at, &c. last aforesaid, unlawfully and wickedly did produce a large sum of money for the purpose of paying and did then and there pay the sum of five guineas for the discharge of the said J. D. from the said militia, and did then and there promise to give the said J. D. ten guineas to absent himself from the said then next session of oyer and terminer, to be held for the city of London; and not appear to give evidence as a witness against the said I. W. to the manifest obstruction, hinderance, and perversion of public justice, in contempt, &c. to the evil example, &c. and against the peace of, &c. And the jurors, &c. do further present, that on, &c. the said I. W. was in due form of law committed to and detained in his majesty's gaol of Newgate, charged upon the oath of the said J. D. and others with a certain felony, to wit, for feloniously, knowingly, paying and putting off to the said J. D. two pieces of counterfeit milled money, made to the likeness and similitude of the lawful milled money and gold coin of this realm, called an half guinea, and two pieces of counterfeit milled

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ral.

Clerkenwell, in the county of Middlesex. And the jurors aforesaid upon their oath aforesaid, do further present, that J. B. late of the said, &c. [*and other defendants,*] together with divers other persons whose names are unknown to the jurors aforesaid, being evil and wicked disposed persons and well knowing the premises aforesaid, and that the said [\* 1153] J. D.\* was a material witness to prove the said offence above specified against the said I. W. and that the said J. D. was bound by recognizance to give evidence against the said I. W. for the said offence, and that the said J. D. intended and designed to appear and give such evidence as he knew touching the said offence, upon a bill of indictment intended to be preferred at the then next session of oyer and terminer, to be holden in and for the said city of London against the said I. W. for the said offence specified and contained in the said warrant, and contriving and intending to obstruct and prevent the due course of law and justice, and wickedly and unjustly to prevent the said I. W. from being convicted of the said offence, and that he might evade justice and go unpunished for the same, and as much as in them lay to suppress the evidence of the said I. D. and to prevent him from attending and giving evidence in such bill of indictment intended to be preferred as aforesaid; afterwards and whilst the said I. W. was in custody and remained a prisoner in the gaol of Newgate by virtue of the warrant aforesaid, and before any indictment had been preferred against the said I. W. for the offence aforesaid, to wit, on, &c. at, &c. unlawfully and wickedly did conspire, combine, confederate, and agree together to solicit and persuade, and to attempt and endeavour to induce the said J. D. to leave London, and go into and remain in the country during the time of holding the then next session of oyer and terminer in and for the said city of London; and not to appear to give evidence as a witness on any bill of indictment that should be preferred at the said then next session against the said I. W. for the offence above mentioned. And the jurors, &c. do further present, that the said J. B. &c. in pursuance of and according to the conspiracy, combination, confederacy, and agreement between them so as aforesaid, before and afterwards, to wit, on the said, &c. at, &c. aforesaid, unlawfully and wickedly did solicit and persuade, and attempt and endeavour to induce the said J. D. to leave London, and go into and remain in the country during the time of holding the then next session of oyer and terminer, in and for the said city of London; and not to appear to give evidence as a witness on any bill of indictment that should be preferred at the said then next session against the said I. W. for the offence above mentioned, and did then and

there promise to the said J. D. that if he would keep out of the way during the time of the said session, he would be well rewarded for it. And the jurors, &c. do further present, that the said J. B. &c. in further pursuance of and according to the conspiracy, combination, confederacy, and agreement between them the said J. B. &c. so as aforesaid before had, afterwards, to wit, on the same day and year last aforesaid, at, &c. last aforesaid,\* unlawfully and wickedly[\* 1154] did propose to the said J. D. to give him the said J. D. five guineas to leave London during the then next session of oyer and terminer, to be held for the said city of London. And the jurors, &c. do further present, that the said J. C. and J. M. in further pursuance of and according to the conspiracy, combination, confederacy, and agreement between them the said J. B. &c. so as aforesaid before had, afterwards, to wit, on the same day and the year last aforesaid, at, &c. last aforesaid, in order to induce and enable the said J. D. to leave London, and absent himself from the said then next session of oyer and terminer, to be held for the said city of London, unlawfully and wickedly did promise and agree to purchase and pay for the discharge of the said J. D. from the East London militia, the said J. D. then and there being a private soldier in the said militia; and did then and there attempt and endeavour to procure the discharge of the said J. D. from the said militia. And the jurors, &c. do further present, that the said E. B. and J. C. in further pursuance of and according to the conspiracy, combination, confederacy, and agreement between them the said J. B. &c. so as aforesaid before had, afterwards, to wit, on the same day and in the year last aforesaid, at, &c. last aforesaid, unlawfully and wickedly did produce a large sum of money for the purpose of paying and did then and there pay the sum of five guineas for the discharge of the said J. D. from the said militia, and did then and there promise to give the said J. D. ten guineas to absent himself from the said then next session of oyer and terminer, to be held for the city of London; and not appear to give evidence as a witness against the said I. W. to the manifest obstruction, hinderance, and perversion of public justice, in contempt, &c. to the evil example, &c. and against the peace of, &c. And the jurors, &c. do further present, that on, &c. the said I. W. was in due form of law committed to and detained in his majesty's gaol of Newgate, charged upon the oath of the said J. D. and others with a certain felony, to wit, for feloniously, knowingly, paying and putting off to the said J. D. two pieces of counterfeit milled money, made to the likeness and similitude of the lawful milled money and gold coin of this realm, called an half guinea, and two pieces of counterfeit milled

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money made to the likeness and similitude of the lawful milled money and gold coin of this realm, called a seven shilling piece, the same not being cut in pieces at and for a lower rate or value than the same by their denomination did import, and were coined and counterfeited for, against the statute, &c. And the jurors, &c. do further present, that the said J. B. &c. being evil-disposed persons and well knowing the premises aforesaid, and that the said J. D. was a material witness\* against the said I. W. to prove the said felony, and contriving and intending that the said I. W. should not be convicted of the said felony, and should escape and go unpunished for the same, afterwards and whilst the said I. W. was a prisoner in the said gaol of Newgate, and before any indictment had been preferred against the said I. W. for the felony, aforesaid, to wit, on the said, &c. at, &c. aforesaid, unlawfully and wickedly did conspire, combine, confederate, and agree together, to endeavour to persuade the said J. D. from attending to give evidence as a witness on a bill of indictment to be preferred against the said I. W. for the said felony, at the then next session of oyer and terminer to be held for the city of London. And the jurors, &c. do further present, that the said J. B. &c. in pursuance of, and according to the conspiracy, combination, confederacy, and agreement between them so as last aforesaid before had, afterwards, to wit, on the same day and in the year last aforesaid, at, &c. last aforesaid, unlawfully and wickedly did endeavour as much as in them lay, to persuade the said J. D. from attending to give evidence as witness against the said I. W. as aforesaid, by then and there promising to give the said J. D. divers large sums of money, and to procure his discharge from the said militia, if he the said J. D. would absent himself from the said then next session of oyer and terminer to be held for the said city of London, to the manifest obstructing and hinderance of public justice, in contempt, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that at the time of the conspiracy, combination, confederacy and agreement hereinafter next mentioned, I. W. was a prisoner in his majesty's gaol of Newgate, charged with felony by him before that time committed, and a certain indictment was about to be preferred against the said I. W. for the said felony, and one J. D. was a material witness in support of such bill of indictment, and that the said J. B. &c. being evil disposed persons and well knowing the premises aforesaid, and contriving and intending as much as in them lay to prevent the due course of law and justice, and to prevent the said J. D. from attending as a witness in support of the said bill of indictment about to be preferred as aforesaid, heretofore and whilst the said

Third  
count.

I. W. was a prisoner in the said gaol of Newgate as last aforesaid, before any indictment had been preferred against the said I. W. for the said last-mentioned felony, to wit, on the said, &c. with force and arms, at, &c. aforesaid, unlawfully and wickedly did conspire, combine, confederate, and agree together, to prevent as much as in them lay, the said J. D. from attending as a witness in support of such bill of indictment so about to be preferred against the said I. W. as last aforesaid; to the great obstruction of public justice, in contempt,\* &c. to the evil and pernicious[\* 1156] example, &c. and against the peace, &c. And the jurors<sup>Fourth</sup> aforesaid, upon their oath aforesaid, do further present, that<sup>count</sup> the said J. B. &c. being such persons as aforesaid, and well<sup>without</sup> knowing that a certain bill of indictment for felony was intend-<sup>laying any</sup> ed and about to be preferred against the said I. W. and that<sup>overt act.</sup> (k) the said J. D. was a material witness in support of such bill of indictment, on the said, &c. with force and arms, at, &c. aforesaid, unlawfully and wickedly did conspire, combine, confederate, and agree together as much as in them lay, to induce the said J. D. to suppress the evidence he knew touching the said last-mentioned felony, and to withdraw and conceal himself, in order to prevent his being examined as a witness in support of such bill of indictment so intended to be preferred as aforesaid, to the great obstruction of public justice, in contempt, &c. to the evil example, &c. against the peace, &c.

That A. B. late of, &c. and C. D. late of, &c. being evil<sup>Against</sup> disposed persons, and devising and intending unjustly to<sup>two per-</sup> oppress and aggrieve divers liege subjects of our said lord<sup>sons for</sup> the king within this realm, and wrongfully charge them<sup>conspiring</sup> with<sup>that one of</sup> the payment of great sums of money, to the amount of two<sup>them</sup> hundred and thirty pounds and upwards, on, &c. with force<sup>should rob</sup> and arms at, &c. aforesaid, did unlawfully conspire, com-<sup>the other,</sup> bine, confederate, and agree together, that he the said A.<sup>with intent</sup> B. should in or near the king's highway there, take from<sup>to charge</sup> the person of the said C. D. the sum of two hundred and<sup>the hun-</sup> thirty pounds and a silver watch, and that the said C. D.<sup>dred. (l)</sup> should make oath, before some justice of the peace, of the said pretended robbery; and that the said C. D. in pursuance of the said conspiracy, combination, confederacy and agreement, did afterwards, to wit, on the same day and year above mentioned, at, &c. aforesaid, personally appear before J. D. esquire, then and yet being one of the justices of our said lord the king assigned, &c. and did make and give information in writing upon oath to and before

(k) This count is good, see 1 Salk. 174. 2 Ld. Raym. 1167.

(l) See a similar form, Starkie, 688.

the said J. D. then and there being such justice as aforesaid, that about ten of the clock in the forenoon of that day, he the said C. D. was assaulted in the highway leading from C. in the county of W. to L. in the county of S., near a place called the Green Man, in the parish of W. in the hundred of H. in the said county of W. by a tall lusty man, wearing a dark brown wig and a brown coat, mounted on a black horse or mare about fifteen hands high, and was by him robbed in the highway aforesaid, of the sum of two hundred and thirty pounds and a silver watch, and that he the said

[\* 1157] C. D.\* did not at the time of the said robbery nor then know the person who committed the said fact, with the fraudulent and wicked intent, and on purpose to charge the inhabitants of the said hundred with the payment of the said sum of two hundred and thirty pounds, under colour of justice and process of law; whereas in truth and in fact, he the said C. D. was not assaulted in the highway leading from C. aforesaid, in the county of W. aforesaid, to L. in the said county of S. in the said place, called the Green Man, in the said parish of W. in the hundred of H. in the said county of W. by a tall lusty man wearing a dark brown wig and a brown coat, mounted on a black horse or mare; and whereas in truth and in fact, he the said C. D. was not at the time in that behalf aforesaid, or at any other time whatsoever, robbed of the sum of two hundred and thirty pounds and a silver watch, as he the said C. D. so swore in and by his said information in writing as aforesaid, to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said A. B. and C. D. being such evil disposed persons as aforesaid, and devising and intending unjustly to oppress and aggrieve divers subjects of our said lord the king within this realm, and wrongfully to charge them with the payment of great sums of money, to the amount of two hundred and thirty pounds and upwards, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully and wickedly conspire, combine, confederate, and agree together, that he the said C. D. should in or near the king's highway, there take from the person of the said A. B. the sum of two hundred and thirty pounds and a silver watch, and the said C. D. in pursuance of the said last-mentioned conspiracy, combination, confederacy and agreement, afterwards, to wit, on the same day and year aforesaid, at the parish of W. aforesaid, in the hundred of H. in the said county of W. did take from the person of the said A. B. the sum of two hundred and thirty pounds and a silver watch, with the fraudulent and wicked intent, and on purpose to charge the inhabitants of the said hundred with the payment of the said last-mentioned sum of two hundred and

Second  
count.



thirty pounds, and the value of the said last-mentioned watch, by process of law; under colour and pretence that he the said C. D. had been robbed of the same, by some person to him the said C. D. unknown, against the peace, &c. [\* 1158]

That on, &c. at, &c. one T. S. was a poor single man, and <sup>Against</sup> unable to maintain himself and any poor woman whom he <sup>two parish</sup> should marry and take to wife, (m) and that the place of <sup>officers for</sup> the last legal settlement of\* the said T. S. on the said, &c. <sup>conspiring</sup> was and ever since hitherto continued to be, and still is in <sup>to per-</sup> the parish of C. in the said county of O. and that one S. M. <sup>suade a</sup> now called S. S. on the same day and year aforesaid, and <sup>poor cou-</sup> continually from thence until the marriage of the said S. <sup>ple to mar-</sup> with the said T. S. hereinafter mentioned, was a poor single <sup>ry in order</sup> woman, legally settled in, and actually chargeable to the <sup>the man's</sup> parish of M. in the county aforesaid. And the jurors, &c. <sup>parish</sup> do further present, that R. H. late of, &c. and W. H. late <sup>with the</sup> of, &c. well knowing the premises, and unlawfully, wickedly, <sup>mainte-</sup> and wrongfully combining, devising, designing, and intend- <sup>nance of</sup> ing to exonerate, free, and discharge the parishioners and <sup>the wo-</sup> inhabitants of the said parish of M. from the charge and <sup>man. (n)</sup> expence which might ensue to the parishioners and inhabi- <sup>First</sup> tants of the said parish of M. from the said S. as a poor <sup>count for a</sup> person, and then having a legal settlement in the said parish <sup>conspiracy</sup> of M. and unjustly to oppress and aggrieve the parishioners <sup>and pro-</sup> and inhabitants of the said parish of C. and wrongfully and <sup>mising to</sup> unjustly to charge and burden the parishioners and inhabi- <sup>procure a</sup> tants of the said parish of C. with the maintenance and sup- <sup>licence, a</sup> port of the said S. on the said, &c. with force and arms, at, <sup>wedding-</sup> &c. aforesaid, unlawfully, and wickedly\* did conspire, com- <sup>ring, and</sup> bine, confederate, agree, and meet together for the wicked <sup>a dinner,</sup> intent and purposes aforesaid, to cause and procure a mar- <sup>&c.</sup> riage to be had and solemnized between the said T. S. and the said S. (they the said T. S. and S. at the time of such conspiracy, combination, confederacy and agreement, being such poor persons, of the several and respective parishes the aforesaid,) and that the said R. H. and W. H. in pursuance of said conspiracy, combination, confederacy, and

(m) This allegation appears to be requisite, 1 East. P. C. 462. ante 1143.

(n) See similar precedents Cro. C. C. 8th Ed. 128. Starkie, 685. C. C. A. 182. See a precedent for conspiring to render paupers chargeable to another parish, 1 Esp. 304. To bring three paupers into a parish in

which they had no settlement without warrant, in order to charge it with them, 6 Wentw. 398. To take a house for a pauper in a parish to gain him a settlement, 4 Wentw. 112. For bringing a female pauper pregnant into a parish for the same purpose, 4 Wentw. 124. ante 1143.

agreement between them had as aforesaid, afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, the better and more effectually to complete and perfect the said wicked contrivance, conspiracy, and intention, did then and there promise the said T. S. that they the said R. H. and W. H. or one of them, would pay for a licence, a wedding-ring, a wedding dinner, and all other costs, charges, and expences, in, and about, and attending the solemnization or ceremony of the marriage, therein after next-mentioned, and also that they the said R. H. and W. H. or one of them, would give something

[\* 1159] handsome\* to the said T. S. and S. and also then and there told the said T. S. that he the said T. S. and the said S. should have no cause to complain, if he the said T. S. would marry and take to wife the said S. by reason of which said premises, he the said T. S. was then and there prevailed upon to consent and agree, and did then and there consent and agree to marry the said S. and did afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, marry and take to wife the said S. (he the said T. S. at the time of the said conspiracy, combination, confederacy, and agreement, and at and after the time of the said marriage, being a poor person as aforesaid, and not having a legal settlement in the said parish of M. but having a legal settlement in the said parish of C. and the said S. at the time of the said conspiracy, combination, confederacy and agreement, and until the time of the said marriage being a poor person, having a legal settlement in, and actually chargeable to the said parish of M.) by means of which said premises the said inhabitants and parishioners of the said parish of C. for a long time, to wit, ever since the time of the said marriage, until the day of the taking of this inquisition, have been put to great charges and expences, amounting in the whole to a large sum of money, to wit, the sum of ten pounds, in and about the maintenance and support of the said S. and are likely to be put to great trouble, and further great charges and expences, in and about the maintaining and supporting of the said S. to the great damage, oppression, and grievance of the said parishioners and inhabitants of the said parish of C. and against the peace, &c. [Second count leaving out the promise of procuring the licence, &c. and stating an expence incurred by virtue of an order of removal. Same as first count to the\*]

Did conspire, combine, confederate, agree and meet together for the purpose last aforesaid, and being so met, did then and there unlawfully and unjustly endeavour to persuade, cause and procure the said T. S. (then being such poor single person, and an inhabitant of the said parish of C. as aforesaid, and the said S. then also being such poor single person and an inhabitant of the said parish of M. as afore-

Second  
count.

said) to intermarry. And the jurors, &c. do further present, That in pursuance of the said last mentioned conspiracy, combination, confederacy and agreement, so had as aforesaid, they the said T. S. and S. afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, according to the rites and ceremonies of the church of England, were married together, and that the said R. H. and W. H. after such marriage was had as last aforesaid, to wit, on, &c. at, &c. aforesaid, by colour and pretence of the said marriage, caused the said S. to be removed as the wife of the said T. S.\* to the said parish of C. as being the place of the legal[\* 1160] settlement of the said T. S. by virtue of a certain order made under the hands and seals of the Rev. J. C. Doctor in Divinity, and J. W. Esq. then being two of the justices of our said lord the king, assigned, &c. [*as ante* 2d vol. 182.] (the said T. S. being at the time of such removal, such poor person as aforesaid), by means, &c. [*as before*] [*Third count stating a conspiracy and persuasion to marry without alledging that the marriage took effect.*] [*Fourth count like the third only stating a mere endeavour to persuade.*]

Middlesex. That L. S. late of, &c. T. L. late of, &c. and J. R. late of, &c. on, &c. at, &c. aforesaid, falsely, unlaw-<sup>For con-  
spiring to  
cheat his  
majesty's  
subjects  
by pro-  
ducing  
false dice  
to be play-  
ed with.</sup> fully and wickedly did conspire, combine, confederate, and agree among themselves, to deceive and defraud, and to cause and procure to be deceived and defrauded, divers of his majesty's liege subjects of great sums of money at play with dice, and that the said L. S., T. L. and J. R. according to the conspiracy, combination, confederacy and agreement among themselves had as aforesaid, afterwards, to wit, on<sup>(o)</sup> the said, &c. in a certain room, parcel of a certain messuage or dwelling house of one A. B. there situate, fraudulently, unlawfully, and deceitfully, did produce and deliver, and cause and procure to be produced and delivered to divers of his said majesty's liege subjects then and there assembled<sup>First  
count for a  
conspiracy  
and pro-  
ducing  
false dice,</sup> to play at dice, thirty false, deceitful and loaded dice, to be then and there used in play, which said dice were then and there played with by divers of his majesty's liege subjects then and there so assembled for the purpose aforesaid, they the said L. S., T. L. and J. R. then and there well knowing and each of them well knowing the same dice by them so produced, and then and there so as aforesaid played with, to be at the time of producing the same as aforesaid, and at the

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(o) See a similar precedent *spiry to raise the price of the*  
Cro. C. A. 201.—An abstract *funds, 3 M and S. 67 as to fraud*  
of the indictment against Lord *at play ante 680.*  
Cochrane and others for a con-

time of such play, false, deceitful, and loaded dice, by reason and means whereof, divers of his said majesty's subjects, who then and there played with the said dice so produced as aforesaid, (not knowing the said dice at the time of such play to be false, deceitful, and loaded dice,) then and there did lose great sums of money, that is to say, F. J. esq. did then and there lose the sum of seven pounds of lawful money of Great Britain, G. L. esq. did then and there also lose the sum of six pounds and six shillings of like lawful money, and J. B. esq. did then and there also lose the sum of five pounds and five shillings of like lawful money, by playing respectively with certain other persons to the jurors aforesaid as yet unknown, with the said false, deceitful and loaded dice, and were then and there severally\* cheated and defrauded of the said respective sums of money by playing with the same dice as aforesaid, to the great damage of the said F. J., G. L. and J. B. to the evil example of all others in the like case offending, and against the peace of our said lord the king, his crown and dignity. [*Second count for fraudulently producing, &c. omitting the conspiracy.*]

For a conspiracy to seduce artificers, and to convey machines to foreign parts. (p)

That J. B. L. late of, &c. and R. S. late of, &c. being persons of evil minds and dispositions, and not regarding the laws and statutes of this realm, on, &c. with force and arms, at, &c. aforesaid, unlawfully, and wickedly, did conspire, combine, confederate, and agree together, and along with a certain person whose surname is B. but whose christian name is as yet unknown to the jurors aforesaid, and S. H. and divers other persons whose names are to the jurors aforesaid unknown, to contract with, entice and persuade, and to endeavour to seduce and encourage divers artificers and workmen then concerned in and employed, or who should have worked at or been employed in printing calicoes and cottons, or in making and preparing any blocks, plates, engines, tools or utensils for such manufactory, to go out of Great Britain to parts beyond the seas, to wit, to Hamburgh, in parts beyond the seas, and also to export from Great Britain to parts beyond the seas, to wit, to Hamburgh, in parts beyond the seas, divers blocks, plates, engines, tools, and utensils, and divers parts of divers blocks, plates, engines, tools and utensils, commonly used in and which were proper for the preparing, working up and finishing of the calico and cotton printing manufactures. And the jurors, &c. do further present that the said person whose surname

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(p) This was the indictment from the crown office. See offence ante 542 to 548. against Lammens and Smallbones, A. D. 1798. and obtained

is B. and S. H. in pursuance of, and according to the said conspiracy, combination, confederacy, and agreement between the said J. B. L. R. S. the said person whose surname is B., and S. H. so as aforesaid before had, afterwards, to wit, on the same day and year aforesaid, with force and arms, at, &c. aforesaid, unlawfully did contract with, entice and persuade, and endeavour to seduce and encourage one R. L. he the said R. L. then being an artificer and workman who had worked at, and been employed in printing calicoes and cottons, and in making and preparing certain engines for the manufactory of printing calicoes and cottons to go out of Great Britain to parts beyond the seas, to wit, to Hamburgh, in parts beyond the seas, by promising unto him the said R. L. that he should be paid the sum of sixty pounds down, have the expences of his journey to Hamburgh paid, and the sum of three guineas weekly, until he should be employed in a manufactory of printing\* calicoes and cottons intended to be established and set up at Hamburgh aforesaid, and that he should be paid one penny for every yard of calico and cotton which he should print at such manufactory, and if he should not have sufficient and constant employment in printing calicoes and cottons, then that he the said R. L. should be paid the said sum of three guineas weekly, as before. And the jurors, &c. do further present, that the said person whose surname is B., and S. H., in further pursuance of, and according to the conspiracy, combination, confederacy, and agreement between the said, &c. [*the parties charged with conspiring,*] so as aforesaid before had, afterwards, to wit, on the same day and year aforesaid, at, &c. [*the place where the contract was made*] unlawfully did contract with, entice and persuade, and endeavour to seduce and encourage one J. T. the said J. T. then and there being an artificer and workman concerned and employed in printing calicoes and cottons, to go out of Great Britain, to parts beyond the seas, to wit, to Hamburgh, in parts beyond the seas, by then and there promising the said J. T. that fifty pounds should be paid down to him the said J. T. that his debts should be paid, that he should have three guineas a week, and a house to live in, and firing for nothing, to wit, at, &c. aforesaid, [*the venue.*] And the jurors, &c. do further present, that the said R. S. in further pursuance of, and according to the said conspiracy, combination, confederacy and agreement, between them the said, &c. so as aforesaid had, afterwards, to wit, on the same day and year aforesaid, at, &c. unlawfully did entice and persuade, and endeavour to seduce one J. L., &c. [*state the attempt to seduce other workmen according to the facts.*] And the jurors, &c. do further present, that the said J. B. L. R. S. the same person whose surname is B. and

S. H. in further pursuance of, and according to the said conspiracy, combination, confederacy, and agreement between them so as aforesaid before had, afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, unlawfully did obtain, acquire and get, and then and there had in their custody, possession, and keeping divers blocks, plates, engines, tools, and utensils, and divers parts of divers other blocks, plates, engines, tools, and utensils commonly used in, and which were proper for the preparing, working up, and finishing of the calico and cotton printing manufactures, with intent to export, and cause and procure the blocks, plates, engines, tools, and utensils, and parts of blocks, plates, engines, tools, and utensils to be exported from Great Britain, to parts beyond the seas, to wit, to Hamburgh, in parts beyond the seas, in contempt of our said lord the king and his laws, to the manifest injury and diminution of the trade and commerce of Great Britain, to the evil and pernicious example, &c. and against the peace, &c. [*Second count stating the\* conspiracy as in the first without any overt acts.*] [*Third count stating the conspiracy as in the first, as to seducing workmen omitting the machinery and without overt acts.*] [*Fourth count for conspiring to seduce J. T. alone, without laying overt acts.*] [*Fifth count for conspiring to seduce J. L. laying no overt acts.*]

Indictment at common law for a conspiracy among workmen to raise their wages and lessen the time of labour. (q)

That A. B. late of, &c. [*and others*] and W. S. late of, &c. on the fifth day of October, in the — year of the reign of our sovereign lord George the Third, now king, &c. being workmen and journeymen in the art, mystery, and manual occupation of a wheelwright, and not being content to work and labour in that art and mystery by the usual number of hours in each day, and at the usual rates and prices for which they and other workmen and journeymen were wont and accustomed to work, but falsely and fraudulently conspiring and combining unjustly and oppressively to increase and augment the wages of themselves and other workmen

(q) See similar precedents, Cro. C. C. 127. Williams J. Conspiracies. Starkie, 694. See a precedent of an indictment to diminish the time of working, and to compel the masters to pay for a whole day's work, 4 Wentw. 115.—Against journeymen lamplighters for conspiring to raise wages, 4 Wentw. 375.—Against labouring carriers for endeavouring to raise their wa-

ges, and to raise subscriptions for the support of those who joined them, 4 Wentw. 120.—Against journeymen for conspiring to raise wages contrary to the order of justices, 4 Wentw. 103. By concluding the above precedent 'contrary to the form of the statute' it will be good under 2 and 3 Edw. VI. c. 15. s. 1. see ante 1142.



and journeymen in the said art, and unjustly to exact and extort great sums of money for their labour and hire in their said art, mystery and manual occupation from the masters who employ them therein, on the same day and year, at, &c. aforesaid, together with divers other workmen and journeymen in the same art, mystery and manual occupation, whose names to the jurors aforesaid are as yet unknown, unlawfully did assemble and meet together, and so being assembled and met, did then and there unjustly and corruptly conspire, combine, confederate, and agree among themselves, that none of the said conspirators after the same' — day of — would work at any lower or lesser rate than five shillings for hewing of every hundred of spokes for wheels, and eight shillings for making of every pair of hinder wheels, for and or on account of any master or employer whatsoever in the said art, mystery and occupation, and also that none of the said conspirators would work day work, or labour any longer than from the hour of six in the morning till the hour of seven in the evening in each day, from thenceforth, to the great damage and oppression not only of their masters employing them in the said art, mystery and manual occupation, but also of\* divers others of his majesty's liege[\* 1164] subjects, to the evil example, &c. and against the peace, &c.

[Commencement of information as ante 7] That R. N. Informa-  
late of, &c. salt maker, (and twelve others of the same de- tion in the  
scription,) on, &c. and long before, and from thenceforth, crown of-  
hitherto, at the Borough aforesaid, were and still are sepa- fice against  
rate and distinct dealers in the making and selling of salt several  
there, and that each and every of them, during all the time salt ma-  
aforesaid, did separately use and exercise and continually kers for  
from thenceforth hitherto have, and each of them hath there conspiring  
separately used and exercised, and each and every of them to enhance  
of salt. (r)  
still doth there use and exercise the mystery, trade, or busi-  
ness of a maker and seller of salt, to wit, at, &c. aforesaid.  
And the said coroner and attorney, &c. further gives the  
court here to understand and be informed, that the said  
R. N, &c. so being severally and respectively dealers in the  
making and selling of salt as aforesaid, together with one  
G. H. late of the borough aforesaid, gentleman, and one  
W. R. late of the same borough, salt maker, unlawfully and  
wickedly conspiring, combining, and confederating together,  
to acquire and extort unreasonable and unjust lucre to  
themselves, and to distress, oppress, and aggrieve the sub-  
jects of our said lord the king, having occasion to buy salt  
at the borough aforesaid, afterwards, to wit, on the same

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(r) See a similar precedent, Cro. C. A. 194. Cro. C. C. 130.

day and year aforesaid, at, &c. aforesaid, unlawfully assembled and met together, and being so assembled and met together, did then and there unjustly, unlawfully, and oppressively, conspire, combine, confederate, and agree together, to raise and enhance the price of salt at the borough aforesaid, above the then used and accustomed price of salt there; and for that purpose did then and there wickedly, unlawfully, and oppressively confederate and agree among themselves, that the said R. N. &c. so being severally dealers in the making and selling of salt there as aforesaid, should not, nor should any of them from thenceforth sell any salt at the then usual and accustomed price of salt at the borough aforesaid; but that all the salt that should from thenceforth be sold by any of them should be sold at certain advanced prices, to wit, &c. [*here state the extra prices intended to be put on the various kinds of salt.*] over and above the then usual and accustomed prices of salt, at the borough aforesaid; and that a certain part or proportion of such advanced prices, to wit, the rate of one half-penny in the bushel of all such salt as should be sold by any of them the said R. N. &c. should be contributed and paid by the respective sellers thereof into the hands of a certain person, (to the said coroner and attorney of our said lord the king as yet unknown for the better supporting and maintaining the said wicked and unlawful conspiracy and combination; and that the said G. H. and W. R. should from henceforth act as clerks or assistants to the said other conspirators for the better carrying of the said unlawful and oppressive conspiracy, combination, confederacy, and agreement, into execution, and should be therefore paid and allowed by the said other conspirators certain wages or salaries, to wit, five pounds a year each. And the said coroner and attorney, &c. further gives the court here to understand and be informed, that each of them the said R. N. &c. in pursuance of the said unlawful and oppressive conspiracy, combination, confederacy, and agreement, so formed and made as aforesaid, afterwards, to wit, on the same day and year aforesaid, and on divers other days and times between that day and the day of exhibiting this information, at, &c. aforesaid, did unlawfully and oppressively sell divers large quantities of salt, to wit, forty thousand bushels of salt to divers liege subjects of our said lord the king, at the said several and respective advanced prices, over and above the usual and accustomed prices of salt at the borough aforesaid, before and at the time of the forming and making of the said unlawful and oppressive conspiracy, combination, and agreement, so formed and made as aforesaid; and did then and there respectively, upon the said several quantities of salt, unlawfully and op-

pressively ask, demand, and receive the said advanced prices from the respective purchasers of such salt; and that the said R. N. &c. and each and every of them respectively, after the forming and making of the said unlawful and oppressive conspiracy, combination, confederacy, and agreement, and in pursuance thereof, to wit, on the said, &c. and on divers other days and times between that day and the day of exhibiting this information at, &c. aforesaid, did unlawfully contribute and pay into the hands of the person aforesaid, (to the said coroner and attorney of our said lord the king as yet unknown) divers large sums of money arising from the sale of the said salt at the advanced prices aforesaid, for the better supporting and maintaining of the said wicked and unlawful conspiracy, combination, confederacy, and agreement; and that the said G. H. and W. R. in pursuance and execution of the said unlawful and oppressive conspiracy, combination, confederacy, and agreement, so formed and made as aforesaid, on the said, &c. and on divers other days and times between that day and the day of exhibiting this information at, &c. aforesaid, unlawfully, wickedly, and oppressively, did act as clerks or assistants to the said other conspirators in and for the better carrying of the said unlawful and oppressive conspiracy, combination, confederacy, and agreement into execution, to the great damage, oppression, and\* grievance of all the liege [\* 1166] subjects of our said lord the king, purchasing salt at the borough aforesaid, to the evil and pernicious example, &c. and against the peace, &c.

That one H. T. late of, &c. serge maker, [*and several* <sup>Against several</sup> *others*] being workmen and labourers in the woollen manufac- <sup>journey-</sup> <sup>men serge</sup> <sup>weavers</sup> <sup>for refu-</sup> <sup>sing to</sup> <sup>work for a</sup> <sup>master</sup> <sup>who had</sup> <sup>employed</sup> <sup>a man con-</sup> <sup>trary to</sup> <sup>certain</sup> <sup>rules en-</sup> <sup>tered into</sup> <sup>by conspi-</sup> <sup>racy. (s)</sup> ture, and divers other persons (to the jurors aforesaid as yet unknown,) being also workmen and labourers in the woollen manufacture, on, &c. with force and arms, at, &c. did unlawfully, and perniciously form and unite themselves into an unlawful club and combination, and did make and ordain certain unlawful and arbitrary bye laws, rules, and orders among themselves, thereby unlawfully and perniciously intending to govern themselves and other serge weavers and workmen, laborers, and persons concerned in the woollen manufacture, and unlawfully and unjustly to exact and ex-

(s) See a similar precedent Cro. C. C. 134. See a precedent against journeymen leather dressers for conspiring not to work in any place where a person was taken to learn the trade for less

than seven years, 4 Wentw. 100. An indictment for conspiring to induce a man to turn a person out of his employment, 5 Esp. Rep. 41.

tort great sums of money from the said serge weavers, workmen, and labourers, by means thereof, which said bye laws, rules, and orders, are as follows, that is to say [*here set out such of the laws as are known.*] And that the said H. T. &c. on, &c. at, &c. aforesaid, with force and arms, did unlawfully assemble and meet together, and being so unlawfully assembled and met together, did then and there unlawfully and unjustly conspire, combine, confederate, and agree together that none of them the said H. T. &c. after the fourteenth day of March then next ensuing, would work for any master or person whatsoever who should employ any serge weaver or other person who should thereafter infringe or break any or either of the said unlawful rules, orders, or bye laws, unless such person or serge maker so to be employed should first pay the sum of twenty pounds to the members of the said club for the use thereof, as a penalty for breaking the rules of the same. And the jurors, &c. do further present, that one R. W. serge weaver, did then and there break one of the said bye laws, rules, and orders, that is to say, that the said R. W. did, &c. [*state the breach of the bye law by the said R. W.*] and that the said R. W. did then and there refuse to pay the said sum of twenty pounds, or any other sum of money to the members of the said club for the use thereof as a penalty for breaking such rule and order, and that one J. B. being a master serge weaver after the said R. W. had so as aforesaid broken the said bye law, rule, and order, that is to say, on, &c. at, &c. aforesaid, did employ the said R. W. in the way of his\* trade and business, as a workman and labourer in the woollen manufacture, to weave serge. And the jurors, &c. do further present, that the said H. T. &c. well knowing the premises, and in pursuance of the said unlawful conspiracy, combination, confederacy and agreement, afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, did refuse to weave serge or work for the said J. B. because he the said J. B. did then and there employ the said R. W. and still do and each of them still doth refuse to weave serge, or work for the said J. B. for the cause aforesaid, to the great damage, &c. to the evil example, &c. and against the peace, &c.

For a conspiracy by journey-men manufacturers to raise the price of labour, prevent others from work. That I. S. late of, &c. [*setting out the names and additions of all the defendants*] together with divers other evil disposed persons, to the number of one thousand and more, whose names are to the jurors aforesaid as yet unknown, on, &c. with force and arms, at, &c. being workmen and journey-men in the art, mystery, and manual occupation of weavers, and not being content to work and labour in that art and mystery at the usual rates and prices for which they and other such workmen and journeymen had been wont and ac-

customed to work, but unlawfully devising and intending <sup>ing, and</sup> unjustly and oppressively to augment and increase the wages <sup>breaking</sup> of themselves and other workmen and journeymen in the <sup>open a pri;</sup> said art, mystery, and manual occupation, and unlawfully <sup>son. Se-</sup> and unjustly to exact and extort great sums of money for <sup>cond</sup> their labour and hire in the said art, mystery, and manual <sup>count for</sup> occupation, from the masters who employed them therein, <sup>the riot,</sup> did unlawfully, unjustly, and corruptly combine, conspire, <sup>&c.</sup> consult, consent, and agree among themselves to demand, exact, and obtain for themselves and other workmen and journeymen in the said art, mystery, and manual occupation from the masters who employed them therein, greater wages, hire, and reward for their labour and work as such workmen and journeymen, than the usual and customary wages, hire, and reward, then usually paid for their labour and work as such workmen and journeymen by the masters who employed them as such workmen and journeymen in the said art, mystery, and manual occupation. And the jurors, &c. do further present, that in pursuance of the said conspiracy, combination, and agreement, and in order to carry their said intentions into effect, the said J. S. &c. with the said other evil disposed persons, whose names are to the said jurors as yet unknown, did then and there, and for a long time before and afterwards, desist from, and totally leave and refuse to continue their labour and work as such workmen and journeymen, and did then and there and on divers other days and times, as well before as afterwards, in a violent and tumultuous\* manner meet and assemble together, at, &c. [\* 1168] aforesaid, and divers other places, and also then and there and on divers other days, as well before as after, go about from place to place and to the warehouses and workshops of divers masters and persons employing such workmen and journeymen in the said art, mystery, and manual occupation, and particularly to the warehouse and workshop of one J. R. and one H. R. being masters and persons as aforesaid, with intent and in order to alarm and terrify the said J. R. and H. R. and other such masters and employers, and by threats and menaces to cause and procure the said J. R. and H. R. and other such masters and employers, to give greater wages, hire and reward to such workmen and journeymen for their labour and work as such workmen and journeymen than the usual and customary wages, hire, and reward, then usually paid for their labour and work as such workmen and journeymen by the masters who employed them as such journeymen and workmen in the said art, mystery, and manual occupation, and did then and there cause and procure, and compel divers such workmen and journeymen to leave and desist from the work and labour in which they

were respectively employed as such workmen and journeymen, and did then and there with force and arms, seize, take, and carry away from divers workmen and journeymen in the said art, mystery, and manual occupation, divers shuttles of and belonging to such workmen and journeymen respectively, and by them respectively used in their work and labour as such workmen and journeymen, and did also then and there, and on divers other days, as well before as after, unlawfully, riotously, and tumultuously assemble and gather themselves, together, at, &c. aforesaid, and divers other places in the said county, and remain and continue together for divers long spaces of time, to wit, the space of twelve hours each of the said days, and during all those times make divers great riots, routs, tumults, and disturbances, to the great terror of all the liege and peaceable subjects of our said lord the king, and did also then and there, to wit, on, &c. aforesaid, with force and arms, unlawfully, riotously, and tumultuously break and enter a certain building, situate and being at, &c. aforesaid, called the New Bailey, used for the confinement of felons and other offenders, and divers, to wit, five hundred shuttles then and there being in the said building, did then and there, with force and arms, unlawfully, riotously, and tumultuously seize, take, and carry away,\* and did also then and there, to wit, on, &c. with force and arms, unlawfully, maliciously, riotously, and tumultuously set fire to the said building, and burn, consume, and destroy the same, to the great damage and oppression not only of the\* masters employing them and other workmen and journeymen in the said art, mystery, and manual occupation, but also of divers other liege subjects of our said lord the king, in contempt of our said lord the king and his laws, and against the peace, &c. That the said J. S. &c. together with divers other evil disposed persons to the number of five hundred and more, whose names are to the jurors aforesaid as yet unknown, afterwards, to wit, on, &c. with force and arms, at, &c. aforesaid, in the county aforesaid, did, unlawfully, riotously, routously, and tumultuously assemble and gather together, with intent to break and disturb the public peace of our said lord the king, and being so then and there assembled and gathered together, did then and there, with force and arms, make a great noise, riot, rout, tumult, and disturbance, and did then and there remain and continue together, making such noise, riot, rout, tumult, and disturbance, for a long space of time, to wit, the space of twelve hours. [*Proceed as in the last count from the asterisk.*]

[\* 1169]

Second  
count for  
the riot,  
&c.

Against  
master

That I. S. late of, &c. and I. L. late of, &c. being evil disposed persons, and contriving and unlawfully, wickedly, and



maliciously intending to injure, prejudice, and aggrieve divers good and worthy subjects of this realm, being respectively journeymen ropemakers, and to deprive them of the means of their livelihood, heretofore, to wit, on, &c. at, &c. aforesaid, did unlawfully conspire, combine, and confederate and agree together, and to and with divers other persons to the jurors aforesaid as yet unknown, being respectively master ropemakers, that they would not, nor would either of them retain or employ any journeymen, who should leave their respective services without the consent of the person or persons they might have last worked for. [And the jurors, &c. do further present, that in pursuance of the said conspiracy, combination, confederacy, and agreement between the said I. S. and I. L. so as aforesaid had, the said I. S. and I. L. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, did respectively refuse to retain and employ G. H., I. K. &c. being then and there respectively journeymen ropemakers, and who had before then respectively left the service of M. N., O. P. &c. for whom they had last worked, without the consent of the said M. N., O. P. &c. for and on account of their having left such service as aforesaid,] to the great damage, &c. in contempt, &c. to the evil example, &c. and against the peace, &c. [*Second count leaving out all within the brackets.*]

That A. S. late of, &c. and T. C. late of, &c. wickedly, unjustly, and maliciously devising and intending to aggrieve one J. R. and also to subject him without any just cause to divers costs\* and charges, and to force and oblige him to undergo and suffer many great and arduous troubles both of body and mind, on, &c. at, &c. aforesaid, wickedly, unlawfully, and maliciously did conspire, combine, confederate, and agree together, to cause and procure the sum of one thousand one hundred pounds, to be indorsed upon a certain precept of our lord the now king, called a bill of Middlesex, issued out of the court of our said lord the now king, before the king himself, by virtue whereof the said J. R. might be arrested to answer in the same court at the suit of the said T. C. by the name of T. J. with an intention that the said J. R. might be compelled to find bail for the said sum of one thousand one hundred pounds, according to the form of the statute in such case made and provided, and that the said T. C. in pursuance of, and according to the conspiracy, combination, confederacy, and agreement, so as aforesaid had and made between him the said T. C. and the said A. S. afterwards, to wit, on, &c. that is to say,

[\* 1170]

For a conspiracy to hold a man to bail for the sum of £1100 on an affidavit which was sworn before the clerk to the signer of the bills of Middlesex. (t)

(a) From the MS. of a gentleman of the bar.

(t) See a similar precedent 4 Wentw. 94.

at, &c. aforesaid, in his own proper person came before B. B. gentleman, then and still being deputy to W. M. then and yet signer of the said precepts of our said lord the now king, called bills of Middlesex, out of the court of our said lord the king before the king himself, (which said W. M. by virtue of his said office, and according to the custom of the said court was such signer in that behalf) and the said T. C. in pursuance of, and according to the said wicked conspiracy, combination, confederacy, and agreement, so as aforesaid had and made between him the said T. C. and the said A. S. afterwards, to wit, on the said, &c. at, &c. aforesaid, did take his corporal oath upon the holy gospel of God before said B. B. then and there having full and sufficient power and authority to administer an oath to the said T. C. in that behalf, by virtue of a certain act of parliament made at a parliament, holden by several prorogations at Westminster, on the twentieth of January, in the twelfth year of the reign of the late king George the First, of Great Britain, France, and Ireland, entitled, &c. and did then and there before the said B. B. the deputy aforesaid, upon his oath aforesaid, falsely, maliciously, wickedly, and corruptly say, depose, swear, and make affidavit in writing amongst other things, that the said J. R. was then justly and truly indebted to him the said T. C. in the sum of one thousand one hundred pounds, for money lent and advanced to the said J. R. which said affidavit was entitled as followeth: "King's bench, T. J. plaintiff, J. R. defendant," as by the said affidavit filed in court may more fully appear, whereas in truth and in fact, at the time at which the said T. C. did take his said oath, and make

[\* 1171] his\* said affidavit in form aforesaid, the said J. R. was not justly and truly indebted to the said T. C. in the sum of one thousand one hundred pounds, for money lent and advanced to the said J. R. and the said A. S. and T. C. at the time of taking such oath, and making such affidavit well knew the same, to wit, at, &c. aforesaid, and whereas in truth and in fact, at the time on which the said T. C. did take his said oath, and make his said affidavit in form aforesaid, the said J. R. was not truly and justly indebted to the said T. C. in any sum of money whatsoever, lent and advanced to the said J. R. and the said A. S. and T. C. at the time of taking such oath, and making such affidavit well knew the same, to wit, at, &c. aforesaid, and whereas in truth and in fact, at the time on which the said T. C. did take his said oath, and make his said affidavit in form aforesaid, he the said J. R. was not indebted to the said T. C. in the said sum of one thousand one hundred pounds, or in any other sum whatsoever, upon any account whatsoever, and the said A. S. and T. C. at the time of taking such

oath, and making such affidavit well knew the same, to wit, at, &c. aforesaid, by reason and means of which said conspiracy, combination, confederacy, and agreement, so as aforesaid had and made between the said A. S. and the said T. C. the said J. R. hath been put to great expence of his money, and hath undergone and suffered many great and arduous troubles both of body and mind, to the great damage of the said J. R. to the evil example of, &c. and against the peace, &c.

That A. H. late of, &c. widow, J. H. late of, &c. and R. H. late of, &c. being evil disposed persons, and wickedly devising and intending unjustly to deprive one J. P. of his good name, fame, credit, and reputation, and also to subject the said J. P. without any just cause, to the pains and penalties by the laws of this country inflicted on persons guilty of wilful and corrupt perjury, on, &c. with force and arms, at, &c. aforesaid, among themselves did unlawfully and wickedly conspire, combine, confederate and agree\* together, falsely and maliciously to charge and accuse the said J. P. of wilful and corrupt perjury, and to indict him for the same supposed crime, and the jurors, &c. do further present, that in prosecution of the said wicked device and intentions of them the said A. H., J. H. and R. H. and according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, the said A. H., J. H. and R. H. afterwards, to wit, at the assizes and general sessions of oyer and terminer of our lord the king, holden at, &c. on Saturday the twenty-first day of August, in the fifty-third year of the reign, &c. before Sir R. G. one of the barons of our lord the king of his court of exchequer, Sir V. G. knight, one of the justices of our said lord the king of the court of C. P. and others, their fellows, justices of our said lord the king, assigned by letters patent of our said lord the king, under the great seal of the united

(u) See a precedent for conspiracy to indict for forgery where the bill was thrown out, 4 Wentw. 96. For a conspiracy to indict for robbery where the bill was thrown out in like manner, Cro. C. C. 277. 7 Ed. Indictment for a conspiracy to indict without naming the crime, but merely stating it as a capital offence, and that in pursuance of the conspiracy the defendant did indict, holden valid,

2 Burr. 993. Indictment for conspiring to indict a man for poisoning horses under 9 Geo. 1. c. 22. who was acquitted, 4 Wentw. 98. An abstract of an indictment for conspiring to cause an innocent man to be executed for robbery, in order to obtain the reward. 1 Leach 45. And see post, Conspiracy against Personal Property, where to extort money has been the design of the offenders.

kingdom of G. B. and I. to them the said Sir R. G. Sir V. G. and others, their fellow justices of our said lord the king, and to any two or more of them directed, (of whom one of them the said Sir R. G. and Sir V. G. or of either in the said letters patent named, our said lord the king willed to be one, to enquire more fully the truth, by the oath of good and lawful men of the county aforesaid, and by other ways, means, and methods by which they should or might better know (as well within liberties as without) by whom the truth of the matter might be the better known and enquired into, of all treasons, misprisions of treason, insurrections, rebellions, counterfeittings, clippings, washings, false coinings, and other falsities of the money of the United kingdom of G. B. and I. and other kingdoms or dominions whatsoever, and of all murders, felonies, manslaughter, killings, burglaries, rapes of women, unlawful meetings, and conventicles, unlawful uttering of words, assemblies, misprisions, confederacies, false allegations, trespasses, riots, routs, retentions, escapes, contempts, falsities, negligences, concealments, maintenances, oppressions, champarties, deceits, and all other evil doings, offences, and injuries whatsoever, and also the accessaries of them, within the county aforesaid, (as well within liberties as without) by whomsoever, and in what manner soever done, committed, or perpetrated, and by whom or to whom, when, how, and after what manner, and of all the articles and circumstances concerning the premises, and every of them, or any of them, in any manner whatsoever, and the said treasons and other the premises according to the laws and custom of E. for that time to hear and determine, did falsely exhibit a certain bill of indictment against the said J. P. by the name and addition of J. P. late of U. in the county aforesaid, gentleman, to Sir P. H. baronet, Sir J. C. H. &c. [*here state the* [\* 1173] *names\* of the grand jurors,*] good and lawful men of the said county of S. then and there sworn and charged to inquire for our sovereign lord the king, for the body of the said county, and which said bill of indictment was and is as follows, that is to say, Somerset, &c. [*here set out the bill preferred verbatim.*] And the said A. H., J. H. and R. H. did then and there attempt and endeavour as much as in them lay, to get the said indictment by the said jury to be found a true bill, when in truth and in fact the matter therein contained was wholly false, and so it then and there appeared to the said jury, who then and there returned the said last mentioned bill of indictment, and found the same no true bill, to the great damage, infamy, and disgrace of the said J. P. in contempt of our said lord the king and his laws, to the evil example, &c. and against the peace, &c. And the jurors first

Second  
count.

above mentioned for our lord the king, upon their oath aforesaid further present, that the said A. H. the said J. H. and the said R. H. being such evil disposed persons as aforesaid, and further contriving and intending to oppress and aggrieve the said J. P. and to subject the said J. P. and without any just cause, to the pains and penalty by the laws of this country inflicted on persons guilty of wilful and corrupt perjury, heretofore, to wit, on the said, &c. with force and arms, at, &c. aforesaid, among themselves, did unlawfully and wickedly conspire, combine, confederate, and agree together, falsely and maliciously to charge and accuse the said J. P. of wilful and corrupt perjury, and to indict him for the same supposed crime. And the jurors first aforesaid, upon their oath aforesaid, do further present, that in prosecution of the said last mentioned wicked devices and intentions of them the said A. H., J. H. and R. H. and according to the said last mentioned conspiracy, combination, and agreement between them, so as aforesaid had, the said A. H., J. H. and R. H. afterwards, to wit, at the assizes and general session of oyer and terminer of our lord the king, holden at Bridgewater aforesaid, in and for the county of S. aforesaid, on, &c. aforesaid, before certain then justices of our said lord the king, assigned to enquire into, hear, and determine all felonies, trespasses, misdemeanours, crimes, and offences whatsoever, before then done and committed within the said county, did falsely exhibit a certain bill of indictment to certain jurors, being good and lawful men of the said county, and then and there sworn and charged to enquire for our sovereign lord the king, for the body of the said county, against the said J. P. by the name and addition of, &c. which said last mentioned bill of indictment was and is as follows, that is to say, &c. [*here set out the bill, and proceed\* as in* [\* 1174] *first count to the end.*] And the jurors first aforesaid, upon their oath aforesaid do further present, that the said A. H., J. H. and R. H. being such evil disposed persons as aforesaid, and devising and intending to oppress and aggrieve the said J. P. and unjustly to accuse him of having been guilty of wilful and corrupt perjury, and to subject him to the pains and penalties thereof, on the said, &c. with force and arms, at, &c. aforesaid, did unlawfully and wickedly conspire, combine, confederate, and agree together falsely to charge, indict, and accuse the said J. P. that he the said J. P.

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(w) That this count is good see 6 Mod. 186. 8 Mod. 321. *Ld. Raym.* 1169. Admitted *Burr.* 995. *Hawk. b. 1. c. 72. a. 1.* The act of conspiring may be proved by collateral circumstances, 1 *Bla. Rep.* 392. 1. *Stra.* 144.

For indict-  
ing a per-  
son for  
forging  
stamps  
who was  
acquitted  
on the tri-  
al.

had committed wilful and corrupt perjury, to the great damage, infamy, and disgrace of the said J. P. to the evil example, &c. and against the peace, &c.

That J. S. late of, &c. and M. S. late of, &c. being persons of an evil mind and wicked disposition, and devising and intending to deprive one W. G. of his good name, fame, credit, and reputation, and also to subject the said W. G. without any just cause to the loss of his life, and forfeiture of his goods and chattels, lands and tenements, on, &c. at, &c. aforesaid, wickedly and maliciously did conspire, combine, and agree amongst themselves to indict and cause to be indicted the said W. G. for a crime or offence liable by the laws of this kingdom to be punished capitally, (x) and to prosecute the said W. G. upon such indictment. And the jurors, &c. do further present, that the said J. S. and M. S. according to the conspiracy, combination, and agreement aforesaid, between them as aforesaid, before had, afterwards, to wit, on, &c. at the session of oyer and terminer of our said lord the king then holden at New Sarum aforesaid, in and for the said county of Wilts, before the honourable Sir R. A. knight, one of the barons of his majesty's court of Exchequer, and E. W. esquire, one of his said majesty's serjeants at law, and others their fellows, justices of our said lord the king, assigned by, &c. [*here recite the commission as in the last precedent,*] to enquire of all crimes by the oath of N. P. esquire, &c. [*the names of the grand jurors,*] good and lawful men of the county aforesaid, then and there sworn and charged to enquire for our said lord the king for the body of the said county, falsely, wickedly and maliciously, and without any reasonable, or probable cause, did indict and cause to be indicted, the aforesaid W. G. by the name of W. G. late of, &c. bookseller and stationer, for that, &c. [*here recite the indictment.*] And the jurors of this inquisition\* on their oath aforesaid, further present, that the said J. S. and M. S. according to the conspiracy, combination, and agreement between them as aforesaid before had, afterwards, to wit, on the said, &c. and on divers other days and times, afterwards, at New Sarum aforesaid, in the county aforesaid, the said W. G. upon the indictment aforesaid wickedly and maliciously did prosecute, until the said W. G. afterwards, to wit, at the delivery of the gaol of our said lord the king of his said county of W. holden at New Sarum aforesaid, on, &c. before the honourable H. L. esquire, one of the barons of his said majesty's court of Exchequer, W. H. esquire, serjeant at law, and others their fellows, justices of

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(x) This is sufficient, 2 Burr. 993.



our said lord the king, duly assigned to deliver his said gaol of the said county of W. of the prisoners therein being by a certain jury of the county by due form of law, was acquitted of the premises aforesaid in the said indictment above specified, by reason of which said false and malicious prosecutions of the said W. G. by them the said J. S. and M. S. in form aforesaid, he the said W. G. was compelled to expend divers sums of money, and to undergo divers hardships of body in his defence to the prosecution aforesaid, to the great damage, disgrace, and infamy of the said W. G. to the evil example, &c. and against the peace, &c.

That A. R. late of, &c. H. B. late of, &c. J. D. late of, &c. wickedly and maliciously devising and intending unjustly to vex, oppress, and aggrieve one J. C. and to deprive him of his good name, fame, credit, and reputation, on, &c. at, &c. aforesaid, wickedly and unlawfully did among themselves conspire, combine, confederate, and agree, falsely and without any reasonable or probable cause whatsoever, to charge and accuse the said J. C. with having taken out of a certain bag a quantity of human hair (which bag was contained in a certain bale which consisted of five bags of hair) of the goods and chattels of the said A. R. And the jurors, &c. do further present, that the said H. B. afterwards, to wit, on the said, &c. at, &c. aforesaid, in pursuance of and according to the said conspiracy, combination, confederacy, and agreement between him and the said A. R. and J. D. so had as aforesaid, did say to the said J. C. that he the said J. C. was a man of credit, and that he the said J. C. had better make it up than have his credit blasted. And the jurors, &c. do further present, that the said A. R. in pursuance of and according to the said conspiracy, combination, confederacy, and agreement between him the said H. B. and J. D. so\* had as aforesaid, afterwards, to wit, on the said, &c. at, &c. aforesaid, unlawfully and wickedly did exact, receive, and take of and from the said J. C. the sum of thirty pounds of lawful money of Great Britain, of the monies of the said J. C. and also a certain promissory note in writing bearing date the said twenty-eighth day of February, in the thirtieth year aforesaid, signed under the hand of the said J. C. for the payment of the sum of thirty-three pounds to one T. H. or order, six weeks after date, and which said note was indorsed by the said T. H. to the said A. R. for and as a composition for the pretended of-

(y) See this precedent, 3 Burr. holden valid. It is also to be 1320. where several objections found Cro. C. C. 135. were taken to it, but it was

fence above mentioned, and to desist from any prosecution against the said J. C. for the same, which said sum of thirty-three pounds hath been since paid by the said J. C. in discharge of the said note, whereas in truth and in fact the said J. C. never was guilty of the said supposed offence, so falsely charged against him as aforesaid, or of any such like offence, to the great damage, impoverishing and disgrace of the said J. C. to the evil and pernicious example, &c. and also against the peace, &c. (z)

Indictment for a conspiracy to lay information against prosecutor for illegal insurance in the lottery, and then obtain money from him to compromise it

That T. W. late of, &c. J. P. late of, &c. and J. M. late of, &c. being evil disposed persons, and wickedly devising and intending to oppress, injure, aggrieve, and impoverish one P. J. H. commonly called and known by the name of J. H. only, on, &c. with force and arms, to wit, at, &c. aforesaid, unlawfully, unjustly, maliciously, and wickedly did conspire, combine, confederate and agree together, by false information, suggestion, and accusation, before some one or more of his majesty's justices of the peace, to cause and procure the said P. J. H. to be arrested and imprisoned as a rogue and vagabond, for some falsely alledged offence against the laws made to prevent illegal insurances in the lottery, and by force and terror of such arrest and imprisonment to extort a large sum of money from the said P. J. H. to prevent his being prosecuted to condemnation as a rogue vagabond as aforesaid, by false testimony. And the jurors, &c. do further present, that the said J. P. in further pursuance of the said conspiracy, combination, confederacy, and agreement afterwards, to wit, on the said, &c. at, &c. aforesaid, did appear before P. C. esquire, then and yet being one of the justices of our said lord the king, assigned, &c. and did then and there upon the oath of him the said J. P. and before the said P. C. then and there being such justice as aforesaid, falsely give information in substance and to the effect following, that is to say, that he the said J. H. (meaning the said P. J. H.)\* did on, &c. unlawfully at Warren-street, in the parish of Saint Pancras in the said county of Middlesex, receive of and from the said J. P. the sum of 3s. 3d. for and in consideration of an agreement then and there made to repay unto the said J. P. the sum of one guinea if a certain ticket numbered 2 in the then present Irish lottery, should be drawn fortunate or unfortunate on the seventeenth day of drawing of the said lottery. And the jurors, &c. do further present, that the said T. W., J. P. and J. M. in further pursuance of the said conspiracy, combination, con-

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(z) It is not necessary to aver Salk. 174. 1 Stra. 193.  
the charge to have been false, 1-

federacy, and agreement, afterwards, to wit, on the said, &c. at, &c. aforesaid, caused and procured the said justice to make and grant his warrant in writing under his hand and seal, for the apprehending and bringing of the said J. H. (meaning the said P. J. H.) before the said justice, to be examined and dealt with according to law for the said pretended offence. And the jurors, &c. do further present, that the said T. W., J. P. and J. M. in further pursuance of the said conspiracy, combination, confederacy, and agreement, afterwards, to wit, on the said, &c. at, &c. aforesaid, caused and procured the said P. J. H. to be arrested by his body and to be kept and detained in custody for a long space of time, to wit, for the space of two days, by virtue of the said warrant for the cause aforesaid. And the jurors, &c. do further present, that the said T. W., J. P. and J. M. in further pursuance of the said conspiracy, combination, confederacy, and agreement, afterwards, and whilst the said P. J. H. was kept and detained in custody as aforesaid, to wit, on, &c. at, &c. aforesaid, did offer and propose to the said P. J. H. that if he the said P. J. H. would pay unto them the said T. W., J. P. and J. M. a certain large sum of money, to wit, the sum of twenty pounds, that they the said T. W., J. P. and J. M. would give such evidence before the said justice upon the hearing of the said information, as should induce the said justice to acquit and discharge the said P. J. H. of the said offence. And the jurors, &c. do further present, that afterwards, to wit, on the said, &c. at, &c. aforesaid, the said P. J. H. having been so imprisoned as aforesaid, for the space of time aforesaid, in order to prevent his being unduly and by false testimony convicted as a rogue and vagabond under the said false charge and information, so as aforesaid exhibited against him before the said P. C. so being such justice as aforesaid, by the said J. P. in pursuance of the said before mentioned conspiracy, combination, confederacy, and agreement, did pay to the said T. W., J. P. and J. M. a large sum of money, to wit, the sum of ten pounds, whereas in truth and in fact the said P. J. H. was not guilty of the said offence so charged and imposed upon him as aforesaid; to the great damage of the said P. J. H. to\* the evil example, &c. and against the peace, &c. [\* 1178]

And the jurors, &c. do further present, that the said T. W., J. P. and J. M. being evil disposed persons and wickedly devising and intending to oppress, aggrieve, injure, and impoverish the said P. J. H. afterwards, to wit, on the said, &c. with force and arms, at, &c. aforesaid, unlawfully, unjustly, wickedly, and maliciously did conspire, combine, confederate, and agree falsely to charge and accuse the said P. J. H. of having received of and from the said J. P. the

Second  
count.

Third  
count.

sum of 3s. 3d. for and in consideration of an agreement that he the said P. J. H. would repay unto the said J. P. the sum of one guinea, if a certain ticket numbered 2 in the then Irish state lottery should be drawn fortunate or unfortunate, on the seventeenth day of the drawing of the said state lottery. And the jurors, &c. do further present, that the said T. W., J. P. and J. M. afterwards, to wit, on the said, &c. in pursuance of the said last mentioned conspiracy, combination, and confederacy and agreement, falsely, wickedly and unlawfully, did charge and accuse him the said P. J. H. of the said last mentioned offence, whereas in truth and in fact the said P. J. H. was not nor is guilty of the same, and the said T. W., J. P. and J. M. then and there well knew him not to be guilty of the same, and that the said T. W., J. P. and J. M. in further pursuance of the said last mentioned conspiracy, combination, confederacy, and agreement, afterwards, to wit, on the said, &c. unlawfully, wickedly, and unjustly, did obtain, acquire, and get into their hands and possession of and from the said P. J. H. the sum of ten pounds of him the said P. J. H. under the aforesaid false colour and pretence, and also under the colour and pretence of concealing the said last mentioned supposed offence, and for not prosecuting the said P. J. H. to conviction for the same, to the great damage, &c. to the evil example, &c. and against the peace, &c. And the jurors, &c. do further present, that the said T. W., J. P. and J. M. on the said, &c. at, &c. aforesaid, wickedly, unlawfully, and maliciously did conspire, combine, confederate and agree together that he the said J. P. should on his corporal oath before some one of his majesty's justices of the peace in and for the said county of Middlesex, charge the said P. J. H. by the name of J. H. that he the said P. J. H. had received of and from the said J. P. the sum of 3s. 3d. for and in consideration of an agreement made between him the said J. P. and the said P. J. H. that he the said P. J. H. would repay to the said J. P. the sum of one guinea, if a certain ticket numbered in the then present Irish lottery should be drawn fortunate or unfortunate, on the seventeenth day of the drawing of the said lottery, with a wicked intent then and there by means of the tenor of the said false charge\* and accusation, to extort from the said P. J. H. large sums of the monies of the said P. J. H. whereas in truth and in fact he the said P. J. H. never was guilty of the said last-mentioned offence; and the said T. W., J. P. and J. M. well knew him the said P. J. H. to be innocent of the said offence. And the jurors, &c. do further present, that afterwards, to wit, on the said, &c. at, &c. aforesaid, the said T. W., J. P. and J. M. in pursuance of the

said last-mentioned conspiracy, combination, confederacy and agreement, under the tenor of the said false accusation above mentioned, did unlawfully, wickedly, and injuriously obtain, acquire, and get into their hands and possession of and from the said P. J. H. a large sum of money, to wit, the sum of ten pounds of the monies of the said P. J. H. to the great damage of the said P. J. H. &c. [as before.]

That R. B. late of, &c. P. J. late of, &c. R. G. late of, &c. and E. C. late of, &c. being persons of evil name, fame, and dishonest conversation, and not endeavouring to seek their living by honest labour, according to the laws of this kingdom of England, but compassing, devising, and conspiring amongst themselves by what unlawful means they might, unlawfully and unjustly to obtain and acquire into their hands and possession, the goods, chattels, and money of the honest liege men and subjects of the said lady the queen, to maintain their dishonest and diabolical course of living, on, &c. at, &c. falsely, unlawfully, wickedly, and craftily, contriving, intending, conspiring, and devising among themselves to deceive and defraud one P. P. the younger of London, mercer, not only of his monies, but also to deprive him the said P. P. of his good name, fame, estate and credit, and to bring him the said P. P. into the greatest hatred, scandal, contempt and infamy, amongst all the liege men and subjects of the said lady the queen, on, &c. aforesaid, at, &c. aforesaid, falsely, unlawfully, deceitfully, maliciously, and for the cause of wicked gain, conspired, contrived, consulted and agreed among themselves falsely, unjustly, wickedly, and diabolically to charge and accuse the said P. P. to be the father of a child whereof the said E. C. was then pregnant, as they then and there pretended and by the conspiracy among them so as aforesaid before had, then and there with force and arms, &c. they did falsely and maliciously affirm, and every one of them then and there\* did falsely and maliciously affirm, that he the said P. P. then lately before had carnal knowledge of the body of her the said E. C. and had carnally known the said E. C. and that he the said P. P. was the father of the pretended child whereof the said E. C. was then pregnant as she asserted

(a) This precedent is from 3 Ld. Raym. 37. It was the indictment against Best, and held valid, 1 Salk. 174. It was objected to it that it did not aver the innocence of the party ac-

cused, but the objection was overruled by the court. See an indictment for conspiracy to induce a person to marry a woman, by giving out that she was pregnant by him, 4 Wentw. 79.

and pretended, and that for the further execution of the premises they the said R. B. B. J. R. G. and E. C. then and there agreed and concluded among themselves that he the said R. B. should go to the said P. P. and should falsely, wickedly, maliciously, and for the sake of wicked gain should charge and accuse him the said P. P. that he the said P. P. then lately before had had carnal knowledge of the body of the said E. C. and had carnally known her the said E. C. and that he the said P. P. was the father of the said pretended child whereof they pretended that she the said E. C. was pregnant; and the jurors, &c. do further say, that the said R. B. in execution of the premises, and according to the said conspiracy, consultation, and agreement among them the said R. B. P. J. R. G. and E. C. as aforesaid before had, afterwards, to wit, on the said, &c. at, &c. aforesaid, with force and arms, &c. falsely, wickedly, maliciously, diabolically, and for the sake of wicked gain, in the hearing of many faithful liege men and subjects of the said lady the queen, charged and accused the said P. P. that he the said P. P. then lately before had had carnal knowledge of the body of the said E. C. and had carnally known her the said E. C. and that he the said P. P. was the father of the said pretended child whereof they affirmed the said E. C. then was pregnant, to the great damage, scandal, and defamation of the said P. P. to the worst and most pernicious example, &c. and against the peace, &c.

Indict-  
ment for a  
conspiracy  
and de-  
frauding a  
person of  
50 pounds,  
under pre-  
tence of  
procuring  
his son the  
office and  
place of  
deputy  
comptrol-  
ler of the  
customs in  
the port of  
Milford.

That W. H. late of, &c. W. N. late of, &c. and T. J. late of, being evil disposed persons, and wickedly and unjustly devising and intending to defraud one J. W. of his monies, on, &c. with force and arms, at, &c. aforesaid, falsely, fraudulently, and unlawfully did conspire, combine, confederate, and agree among themselves to obtain, acquire, and get into their hands and possession of and from B. the wife of the said J. W. a great sum of money of him the said J. W. under a false colour and pretence of procuring for G. W. the son of the said J. W. and B. W. the office and place of deputy of the said W. H. as comptroller of his majesty's customs in his port of Milford, and the members and creeks thereunto\* belonging; and the said W. H. in pursuance of and according to the said conspiracy, combination, confederacy,

(b)

[\* 1181]

(b) See similar precedents, Cro. C. C. 127. Starkie, 696. See a precedent for conspiring to extort money, under pretence of procuring a place in the custom-house, Cro. C. A. 198. and

the abstract of a precedent for procuring money by conspiracy and pretence of obtaining an office from the lords of the treasury, 2 Campb. 229.



and agreement between him and the said W. N. and T. J. so as aforesaid before had, afterwards, to wit, on the said, &c. at, &c. aforesaid, falsely, fraudulently, unlawfully, and deceitfully did pretend to the said B. W. that he the said W. H. then had as comptroller of his majesty's customs in the port of Milford aforesaid, and the members and creeks thereunto belonging, power and authority then and there to appoint the said G. W. to be his deputy, and that the said T. J. in pursuance of and according to the said conspiracy, combination, confederacy, and agreement between him and the said W. H. and W. N. so as aforesaid before had, did then and there fraudulently pretend and affirm to the said B. W. that he the said T. J. had power and authority on behalf of the said W. H. to dispose of the said office and place of deputy to the said J. W. for the said G. W. his son, and that the said T. J. and W. N. in pursuance of and according to the said conspiracy, combination, confederacy, and agreement between them and the said W. H. so as aforesaid had, afterwards, to wit, on the said, &c. at, &c. aforesaid, by the false pretences aforesaid, and also under colour and pretence of a certain deputation purporting to be under the hand and seal of the said W. H. and purporting that the said W. H. had thereby deputed and empowered the said G. W. to act and officiate for him the said W. H. as his deputy in the office, business, and employment of a comptroller of the customs at A. a member or creek belonging to the chief port of M. aforesaid, fraudulently and unlawfully did obtain, acquire, and get into their hands and possession the sum of fifty pounds of lawful money of Great Britain, of the monies of the said J. W. of and from the said B. W. that is to say, the said T. J. the sum of fifteen pounds, and the said W. N. the sum of thirty-five pounds, whereas in truth and in fact the said W. H. had not then any power to appoint the said G. W. to be his deputy, nor in any wise to depute and empower him the said G. W. to act and officiate for him the said W. H. as his deputy in the office, business, and employment as a comptroller of the customs at A. aforesaid, to the great damage of the said J. W. to the evil and pernicious example, &c. and against the peace, &c.

That W. G. late of, &c. and W. B. late of, &c. being evil disposed persons, and wickedly devising and intending one A. L. not only of his credit and good reputation unjustly to deprive, but also to obtain and acquire to themselves of and from the said A. L. divers large sums of money, on, &c. with force and arms, at, &c. aforesaid, did amongst themselves conspire, combine, confederate, and agree falsely to charge and accuse the said A. L. with having lately\* before received stolen goods. And the jurors, &c. do further pre-  
 For conspiring to charge a man with receiving stolen goods, and thereby obtaining money for [\* 1182]

com-  
pounding  
the same,  
& causing  
him to lay  
out a sum  
of money  
for the  
entertain-  
ment of  
the con-  
spirators  
at one of  
their  
houses. (c)

sent, that the said W. G. and W. B. afterwards, to wit, on the said, &c. at, &c. aforesaid, according to the said conspiracy, combination, confederacy, and agreement between themselves before had as aforesaid, falsely, wickedly, and for the sake of unjust lucre and gain, did in the presence and hearing of divers persons, charge and accuse him the said A. L. that he the said A. L. had bought hats that were stolen, knowing them to be stolen, and that they the said W. G. and W. B. did then and there falsely pretend and affirm to the said A. L. that a bill of indictment was then found at the general session of the peace, holden at the New Sessions-house on Clerkenwell-green, in and for the said county of M. on, &c. then last past against him the said A. L. for receiving stolen goods, knowing the same to have been stolen, whereas in truth and in fact there was not at the time of such charge and accusation, nor at any time before or since, any bill or bills of indictment whatsoever in any manner found against the said A. L. for the said supposed offence so falsely charged on him, or for any such like crime, and whereas in truth and in fact the said A. L. was never guilty of the said supposed offence, or any other offence of that kind. And the jurors, &c. do further present, that by the said false accusations and by divers threats, menaces, and allegations of them the said W. G. and W. B. that he the said A. L. should be transported into parts beyond the seas for the said pretended offence, they the said W. G. and W. B. did afterwards, to wit, on the said, &c. at &c. aforesaid, demand, receive, and take of the said A. L. one piece of gold coin of the proper coin of this realm, called a guinea, for and as a composition of the said pretended offence, and to discharge the said A. L. from all further prosecution for the same, and they the said W. G. and W. B. did also then and there by the false and wicked pretences aforesaid, unlawfully cause and procure the said A. L. to expend and lay out, and the said A. L. did then and there expend and lay out twenty-three shillings of lawful money of Great Britain, at the dwelling-house of the said W. B. in wine and other liquors, in the company and for the entertainment of them the said W. G. and W. B. to the great damage, infamy, and disgrace of the said A. L. to the evil and pernicious example, &c. and against the peace, &c.

For con-  
spiring to  
charge a  
man with

That J. P. late of, &c. E. his wife, and J. H. late of, &c. being evil disposed persons, and wickedly devising and intending unjustly to deprive one H. S. of his good

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(c) See similar precedents, Cro. C. C. 125. Starkie, 692.

name, fame, credit and reputation, and also to subject a rape, & the said H. S. without any just cause to the\* loss of his <sup>preferring</sup> life, and the forfeiture of his goods, on, &c. with force <sup>an indict-</sup> and arms, at, &c. aforesaid, among themselves did un-<sup>ment</sup> lawfully and wickedly conspire, combine, confederate, <sup>him for</sup> and agree falsely to charge and accuse the said H. S. that he <sup>the same</sup> the said H. S. had then lately before feloniously ravished <sup>(which</sup> and carnally known the said E. against her will and consent. <sup>was re-</sup> And the jurors, &c. do further present, that the said J. P., E. <sup>turned not</sup> his wife, and J. H. afterwards, to wit, on the said, &c. at, <sup>found)</sup> &c. aforesaid, according to the conspiracy, combination, <sup>with an in-</sup> confederacy, and agreement between them as aforesaid had, <sup>tent to ob-</sup> falsely, unlawfully, and for wicked gain sake, in the presence <sup>tain money</sup> and hearing of divers persons, did charge and accuse the <sup>from him.</sup> said H. S. that he the said H. S. had then lately before felo- <sup>(d)</sup> niously ravished and carnally known the said E. And the <sup>[\* 1183]</sup> jurors, &c. do further present, that in further prosecution of the said wicked devices and intentions of them the said J. P., E. his wife, and J. H., and according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, the said E. afterwards, to wit, on the said, &c. at, &c. aforesaid, did upon her oath falsely charge and accuse the said H. S. before T. D. esquire, then and yet being one of the justices of our said lord the king, assigned, &c. that he the said H. S. then lately before had carnal knowledge of the body of her the said E. against her consent. And the jurors, &c. do further present, that in further prosecution of the said wicked devices and intentions of them the said J. P., E. his wife, and J. H., and according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, the said E. wife of J. P. afterwards, to wit, at a general quarter session of the peace of our said lord the king, holden at the new Sessions-house on Clerkenwell-green, in and for the county of Middlesex aforesaid, on Monday the fourth day of July in the year aforesaid, before W. M. esquire, Sir S. S. knight, J. S. and W. H. esquires, and others their fellows, justices of our said lord the king, assigned, &c. did falsely exhibit a certain bill commonly called a bill of indictment, against the said H. S. by the name and addition of H. S. late of the parish of St. Andrew, Holborn, in the county of Middlesex, yeoman, to J. S. gentleman, &c. [*name all the grand jurymen to whom the bill was exhibited,*] good and lawful men of the said county of Middlesex, then and there sworn and charged to enquire for our said lord the king for the body of the

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(d) See similar precedents, Cro. C. C. 124. Starkie, 690.  
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said county, which said bill of indictment was by the said jurors above named then and there returned in the court aforesaid, before the said justices of our said lord the king [\* 1184] above named, and others their fellows\* aforesaid, thus indorsed, "not found," which said bill follows in these words, to wit, [*recite the bill exhibited, verbatim,*] with intent to obtain and acquire unjustly to them the said J. P., E. his wife, and J. H. of and from the said H. S. divers sums of money for compounding the said pretended felony and rape so falsely charged upon him as aforesaid, to the great damage, &c. to the evil and pernicious example, &c. and against the peace, &c.

For a conspiracy to charge a man with committing an unnatural crime with one of the conspirators, and thereby obtaining money under pretence of concealing the same and desisting from prosecution. (e).

That H. P. late of, &c. C. W. late of, &c. and S. T. late of, &c. being evil disposed persons, and contriving and intending one G. G. not only of his good name, fame, credit, and reputation, wholly to deprive, but also to obtain and get for themselves of and from the said G. G. divers sums of money, on, &c. at the said, &c. among themselves did conspire, combine, confederate, and agree, falsely to charge and accuse the said G. G. that he the said G. G. then lately before had committed the crime of sodomy, commonly called buggery, with him the said H. P. And the jurors, &c. do further present, that the said H. P., C. W. and S. T. afterwards, to wit, on the said, &c. at, &c. aforesaid, according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, falsely, unlawfully, and wickedly did charge and accuse the said G. G. that he the said G. G. then lately before had committed the crime of sodomy, commonly called buggery, with him the said H. P. whereas in truth and in fact the said G. G. was never guilty of the said crime, or of any crime of the like nature. And that they the said H. P., C. W. and S. T. in pursuance of and according to the conspiracy, combination, confederacy, and agreement between them as aforesaid had, afterwards, to wit, on the said, &c. at, &c. aforesaid, unlawfully, wickedly, and unjustly did obtain, acquire, and get into their hands and possession, the sum of five pounds of lawful money of Great Britain, of the monies of the said G. G. of and from the said G. G. under the aforesaid false colour and pretence, and also under colour and pretence of concealing the said supposed crime, and for not prosecuting the said G. G. for the same, to the great damage of the said G. G. to the evil and pernicious example, &c. and against the peace, &c. [*There was a count omitting the conspiracy for obtaining money by threats.*]

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(e) See similar precedents, Cro. C. C. 126. Starkie, 692.

That F. N. H. late of, &c. R. C. late of, &c. and W. S. late of the same place, labourers, being persons of wicked and depraved mind and of needy and desperate circumstances, and seeking to get their living by various subtle, fraudulent, and dishonest practices, on, &c. with force and arms, at, &c. aforesaid, unlawfully, fraudulently,\* and deceitfully did conspire, confederate, and agree together, to cheat and defraud S. G. C. of his monies; and that the said F. N. H. the said R. C. and the said W. S. in pursuance of the said conspiracy, combination, and agreement so as aforesaid entered into by them as aforesaid, then and there, to wit, on the said, &c. did falsely pretend to the said S. G. C. that they the said F. N. H., R. C. and W. S. were persons interested in and connected with a bank in the country, and were able to advance and would procure to be advanced a large sum of money, to and for the use of the said S. G. C. from their bank in the country, upon certain bills of exchange to be accepted by the said S. G. C. payable at a future day, and to be discounted by them the said F. N. H., R. C. and W. S.; by means of which said false pretences, they the said F. N. H., R. C. and W. S. did then and there procure the said S. G. C. then and there to accept certain bills of exchange for the payment of certain large sums of lawful money of Great Britain, in the whole amounting to a great sum of lawful money of Great Britain, to wit, the sum of five thousand pounds, payable at a day then to come to the said F. N. H. or his order, (to wit) twelve bills of exchange, for the payment respectively of the sums of four hundred and fifty pounds, three hundred and fifty pounds, three hundred and fifty pounds, two hundred and fifty pounds, five hundred pounds, five hundred pounds, five hundred pounds, five hundred pounds, five hundred pounds, three hundred and fifty pounds, and two hundred and fifty pounds, and to deliver the same so accepted as aforesaid, into the custody and possession of him the said F. N. H. for the purpose of having an advance of money made to him the said S. G. C. on the same, and having the same discounted to and for the use of the said S. G. C.; whereas in truth and in fact, they the said F. N. H., R. C. and W. S. at the time of making the said false pretences as aforesaid, then and there, to wit, on the said, etc. at, etc. aforesaid, well knew that they were not interested in or connected with any bank in the country;

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(f) This indictment was settled by an eminent crown lawyer, and the defendants were convicted, see the law, &c. ante 1020.

and whereas in truth and in fact, at the time of making the said false pretences as aforesaid, they the said F. N. H., R. C., and W. S. well knew that they were utterly unable to advance any large sum of money on the said bills of exchange or any of them, or to discount the same or any of them for the use of the said S. G. C. and were then in needy and distressed circumstances; and whereas in truth and in fact, at the time of making the said false pretences as aforesaid, they the said F. N. H., R. C., and W. S. then and there, to wit, on the said, etc. at, etc. aforesaid, never intended to advance any money whatsoever on the said bills of exchange so accepted as aforesaid, or to discount the same\* for the use and benefit of the said S. G. C. but on the contrary fraudulently to convert the said bills of exchange so accepted as aforesaid, to their own use, and utterly to cheat and defraud the said S. G. C. of the same, to the great damage of the said S. G. C. to the evil example, etc. and against the peace, etc. And the jurors, etc. do further present, that the said F. N. H., R. C. and W. S. afterwards, to wit, on the said, etc. with force and arms, at, etc. aforesaid, unlawfully, fraudulently, and deceitfully did conspire, combine, confederate, and agree together to cheat and defraud the said S. G. C. of his monies; and that in pursuance of the said last mentioned conspiracy, combination, confederacy and agreement, they the said F. N. H., R. C. and W. S. did then and there, to wit, on the said, etc. at, etc. aforesaid, get into their hands and possession of and from the said S. G. C. certain other bills of exchange accepted by the said S. G. C. and payable at a future day, (to wit) twelve other bills of exchange so accepted and payable as last aforesaid, and of great amount and value, to wit, of the amount and value of five thousand pounds in the whole, under a false pretence that they the said F. N. H., R. C., and W. S. would advance and procure to be advanced to the said S. G. C. upon the security of the said bills a large sum of money, for the use of the said S. G. C. they the said F. N. H., R. C. and W. S. at the time when they so got into their said possession the said last mentioned bills of exchange so accepted as aforesaid, then and there, to wit, on the said, etc. at, etc. aforesaid, having no intention to advance any money or procure any advance of money upon the said last mentioned bills for the use of the said S. G. C. but to convert the same to their own use, and utterly to cheat and defraud the said S. G. C. of the same, to the great damage and deception of the said S. G. C. to the evil example, etc. and against the peace, etc. And the jurors, etc. do further present, that the said F. N. H., R. C. and W. S. afterwards, to wit, on the same day and year aforesaid, with force and arms, at, etc.

[\* 1186]

Second  
count.Third  
count for a  
general  
conspiracy



aforesaid, unlawfully, fraudulently, and deceitfully did con- to defraud,  
spire, combine, confederate and agree together, to cheat and stating no  
defraud the said S. G. C. of his monies, to the great damage overt act.  
of the said S. G. C., to the evil example, etc. and against  
the peace, etc.

That F. N. H. late of, etc. R. C. late of, etc. and W. S. Indictment  
late of, etc. being persons of wicked and fraudulent minds for a con-  
and dispositions, and in needy and desperate circumstances, spiracy by  
on, etc. with force and arms, at, etc. aforesaid, unlawfully, the defend-  
wickedly, and deceitfully did conspire, combine, confede- ants to ob-  
rate and agree together, to cheat and defraud T. J. and tain posses-  
P. J. of, etc. in the principality of Wales, dealers in wool, sion of a  
of their goods, wares, and merchandizes, and that in pur- large  
suance\* of the said wicked, fraudulent, and unlawful con- quantity  
spiracy, combination, confederacy and agreement, the said of wool by  
W. S. afterwards, to wit, on the same day and year afore- pretend-  
said, did travel unto W. in the county of G. and did then ing to be  
and there falsely pretend to the said T. J. and P. J. that merchants  
the said F. N. H. was a merchant of credit and respecta- and paying  
bility, carrying on the business of a merchant in Suffolk with bills  
lane Cannon street, to wit, in the parish of, &c. aforesaid, drawn on  
in London aforesaid, and that he the said W. S. was an each other  
agent of the mercantile house of the said F. N. H. at, &c. good for  
aforesaid, and in further prosecution of the said unlawful nothing.  
conspiracy, the said W. S. did then and there contract with (\$)  
the said T. J. and P. J. for the purchase of a certain num- [\* 1187]  
ber of packs of wool, to wit, twenty-nine packs of wool of  
great value, to wit, of the value of five hundred and seventy-  
four pounds six shillings and four pence, to be paid by cer-  
tain bills of exchange to be then and there drawn by the  
said W. S. on the said F. N. H. excepting the sum of  
thirteen pounds to be paid in cash by the said W. S. and  
the said T. J. and P. J. trusting to the false pretences and  
misrepresentations of the said W. S. as aforesaid, did then  
and there receive of the said W. S. certain bills of exchange,  
drawn by the said W. S. on the said F. N. H. in the pre-  
tended character of merchants, payable at a future day, to  
wit, five bills of exchange, for payment of a large sum of  
money, in the whole amounting to the sum of five hundred  
and sixty-one pounds six shillings and four pence, together  
with the sum of thirteen pounds, as and for the conside-  
ration for the said twenty-nine packs of wool; and he the

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(g) On this indictment, which fence of obtaining goods, &c. by  
was settled by an eminent false pretences, ante 994 to  
crown lawyer, the defendants 1021.  
were convicted as to the of-

said W. S. did then and there by the means and pretences aforesaid, obtain and get into his possession the said twenty-nine packs of wool, (to wit) at, &c. aforesaid, whereas the said W. S. at the time of making the said false pretences as aforesaid, well knew that the said F. N. H. was no merchant, but falsely assuming that character to defraud his majesty's subjects, and that he the said W. S. was not acting as an agent for the said F. N. H. in the fair and real business and character of a merchant, and well knew that the said several bills or either of them were not intended to be paid to the holders of the same, but were drawn and given as aforesaid, for the purpose of fraud and deception, to wit, at, &c. aforesaid, to the great damage and deception of the said T. J. and P. J. to the evil example, &c. and against the peace, &c. [*There was a second count for a general conspiracy to defraud, as in the last precedent.*]

[\* 1188] That\* on, &c. at, &c. there happened a dreadful and terrible fire, which in a short space of time, burned down and consumed a very great number of dwelling houses, together with several out-houses, barns, stables, goods, wares, merchandizes, stock in trade, and husbandry of great value, to the great distress and impoverishment of the poor owners thereof and their families; and that in tender consideration thereof, and on the humble petition of A. B., C. D., E. F. and two hundred other distressed persons, on behalf of themselves and a great many other sufferers by the said fire, our said lord the king, deeply sensible of the unspeakable misery of the said poor sufferers, out of his special grace and princely compassion, was graciously pleased to condescend to grant his letters patent (commonly called a brief) sealed with his great seal, bearing date, &c. unto the said petitioners, thereby granting, &c. [*set out the letters patent.*] And the jurors, &c. do further present, that a copy of the said brief, printed by R. S. being the printer of our said lord the king, and indorsed and marked in a convenient part of the said printed copy, that is to say, on the back of the said printed copy, with the name of the said A. B. (the said A. B. being one of the trustees named in the said letters patent) written with his own, and the time of the said A. B.'s signing the same, being also indorsed and marked on the said copy, and the printed copy being stamped according to the form of the statute in that case made and provided, was afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, duly sent and delivered to one T. K. late of the parish of A. aforesaid, in the said county of W.

For a conspiracy by the curate & officers of a parish to defraud sufferers by fire of money collected by a brief for their relief. (h)

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(h) See similar precedents, Cro. C. C. 136. Cro. C. A. 220.

linen draper, and one C. T. late of the same place, copper-smith (they the said T. K. and C. T. then and there being the churchwardens of the said parish of A.) to be read and published, and the charity to be thereon collected, who afterwards, to wit, on, &c. at, &c. aforesaid, received the same printed copy, and afterwards, to wit, on, &c. at, &c. aforesaid, delivered the same to T. S. late of the said parish of A. clerk, being the then curate of the said parish, who then and there received the same, and that the said T. S. did openly before sermon had begun, read such printed brief in the church of the said parish of A. to the congregation there assembled on one of the Sundays which happened within two months next after the said T. S. had received the same, to wit, on, &c. to wit, at, &c. aforesaid. And the jurors, &c. do further present, that the said T. K. and C. T. afterwards, to wit, on, &c. last aforesaid, at, &c. aforesaid, did collect and receive in the said church,\* divers large sums of money freely therein given, [\* 1189] that is to say, from C. D. the sum of, &c. and from E. F. the sum of, &c. amounting in the whole to a large sum of money, to wit, to the sum of, &c. of lawful money, which said several sums of money were so given by the said C. D. and E. F. respectively to the said T. K. and C. T. to and for the use of the poor sufferers by the dreadful fire aforesaid; and the jurors, &c. do further present, that the said T. S., T. K. and C. T. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, did unlawfully and unjustly conspire, combine, confederate, and agree among themselves to cheat and defraud the said poor sufferers of a large sum of money, to wit, of the sum of, &c. part of the said sum of, &c. which had been so as aforesaid collected and received by the said T. K. and C. T. And the jurors, &c. do further present, that the said T. S., T. K. and C. T. in pursuance of the conspiracy and combination aforesaid, afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, delivered to one M. N. the said M. N. then and there being a deputy and agent authorized by the said letters patent to receive such charitable money for the use of the said poor sufferers, a small sum of money, to wit, the sum of, &c. and no more, (being only part of the said sum of, &c. so charitably and benevolently contributed and collected as and for the purpose aforesaid,) as and for the whole of the said money, so collected and received from the inhabitants of the said parish of A. and the said other well disposed persons then being within the same parish, to be delivered to the deputies and agents authorized to receive the same for the use of the said poor sufferers as aforesaid, by reason whereof the said poor sufferers were greatly in-

jured and aggrieved, to the great damage of the said poor sufferers, and against the peace, &c.

There are several very special precedents in Wentworth for conspiracies to defraud, but their great length, and the peculiarity of the circumstances they state, render their insertion here unadvisable. There are two for conspiracy to obtain money by falsely pretending to secure an annuity to the prosecutor, 4 Wentworth, 80, 89—one for combining to prevent customers from dealing with a particular tradesman, 4 Wentw. 104—one for an attempt to ruin manufacturers by threatening their workmen, riots, and various acts of violence, 6 Wentw. 493—and one for conspiring to procure an acceptance\* by false representations of the credit of the drawer, and that the defendants could get the bill discounted, 6 Wentw. 378—and one for insuring ships, and then procuring them to be sunk at sea, 6 Wentw. 387. There is in Cro. C. A. 191, a very long indictment for conspiring to influence a man not to sell stock, but to buy more by false representations respecting public affairs, and another, Cro. C. A. 191, for conspiring to alter a lease in favour of the lessor, to the prejudice of the lessee. See also for other precedents of conspiracy, Trem. P. C. 82 to 85.

For a conspiracy to break into a dwelling house with a felonious intent to steal the goods therein. (i) That E. E. late of, &c. J. C. late of, &c. and T. W. late of, &c. being persons of evil name and fame, and of wicked and depraved character, on, &c. with force and arms, at, &c. aforesaid, unlawfully and wickedly did conspire, combine, confederate, and agree together, and with divers other evil disposed persons, whose names are unknown to the jurors aforesaid, unlawfully to attempt and endeavour, feloniously, and burglariously to break and enter the dwelling house of G. A. P. there situate, with intent the goods and chattels therein being feloniously and

(i) On this indictment the defendants were convicted. It was settled by an eminent crown lawyer. See an indictment for a conspiracy to enter a preserve with violence in the night, 13

East, 228. where it was holden that it would not lie; sed quare, see ante 1140, 1. as to the offence of burglary, ante 1090 to 1100.

burglariously to steal, take and carry away. And the jurors, &c. do further present, that the said E. E., J. C. and T. W., in pursuance of, and according to the conspiracy, combination, confederacy, and agreement aforesaid, afterwards, to wit, on the same day and in the year aforesaid, about the hour of eight in the evening of the same day, with force and arms, at, &c. aforesaid, the dwelling-house of the said G. A. P. there situate, unlawfully did attempt, feloniously and burglariously to break and enter, with intent the goods and chattels therein being, feloniously and burglariously, to steal, take and carry away, by then and there endeavouring to break and force open the outer door of the said dwelling-house, with a certain iron crow, and also by then and there endeavouring to open the outer door of the said dwelling-house with a picklock key, to the great damage of the said G. A. P. to the evil example of, &c. in contempt, &c. and against the peace, &c. And the jurors, &c. do further present, that the said E. E., J. C. and T. W. being such persons as aforesaid, afterwards, to wit, on the same day and the year aforesaid, about the hour of eight in the night of the same day, with force and arms, at, &c. aforesaid, unlawfully did attempt feloniously and burglariously to break and enter the said dwelling-house of the said G. A. P. there situate, with intent, feloniously and burglariously to steal, take, and carry away\* the goods and chattels therein being, by then and there endeavouring to force and break open the outer door of the said dwelling-house, with a certain iron crow, and also by then and there endeavouring to open the outer door of the said dwelling house with a pick-lock key, to the great damage of the said G. A. P. and against the peace, &c. And the jurors, &c. do further present that the said E. E., J. C. and T. W. being such persons as aforesaid, on the same day, and in the year aforesaid, with force and arms, at, &c. aforesaid, unlawfully and wickedly did conspire, combine, confederate and agree together, and with the said other persons whose names are unknown as aforesaid, to attempt, and endeavour as much as in them lay, to break and enter the said dwelling-house of the said G. A. P. there situate, with intent the goods and chattels therein being, feloniously to steal, take and carry away, and that the said E. E., J. C. and T. W. in pursuance of and according to the conspiracy, combination, confederacy, and agreement, so as last aforesaid before had, on the same day, and in the year aforesaid, about the hour of three in the afternoon, with force and arms, at, &c. aforesaid, the dwelling-house of the said G. A. P. there situate, unlawfully did attempt to break and enter, with intent the goods and chattels therein

Second  
count for  
an attempt  
to break,  
&c.

[\* 1191]

Third  
count for  
conspi-  
racy to at-  
tempt to  
break  
house in  
day time.

Fourth  
count for  
attempt to  
do the  
like.

being, feloniously to steal, take and carry away, by then and there endeavouring to force and break open the outer door of the said dwelling-house, with a certain iron crow, and also by then and there endeavouring to open the outer door of the said dwelling-house with a pick-lock key, to the great damage of the said G. A. P. to the evil example, &c. in contempt, &c. and against the peace, &c. And the jurors, &c. do further present, that the said E. E., J. C. and T. W. being such persons as aforesaid, on the same day and year aforesaid, about the hour of three in the afternoon of the same day, with force and arms, at, &c. aforesaid, the dwelling house of the said G. A. P. there situate, unlawfully, and wickedly did attempt to break and enter, with intent feloniously to steal, take and carry away the goods and chattels therein being, by then and there endeavouring to force and break open the outer door of the said dwelling house with a certain iron crow, and also by then and there endeavouring to open the outer door of the said dwelling house with a pick-lock key, to the great damage of the said G. A. P. and against the peace, &c.

For a conspiracy to pull down a wall, &c. and pulling down the same.

(j)

[\* 1192]

That A. B. late of, &c. [*and other defendants,*] together with divers other evil disposed persons, to the jurors aforesaid as yet unknown,\* heretofore, to wit, on, &c. with force and arms, at, &c. aforesaid, did unlawfully conspire, combine, confederate, and agree together, unlawfully, riotously, and routously, to break down, pull down, prostrate, demolish, and destroy a certain wall, and certain other erections, buildings, posts, pales, rails, and fences of one C. D. there then erected, standing, and being near a certain dwelling house and premises of the said C. D. there situate. And the jurors, &c. do further present, that in pursuance of the said conspiracy, combination, confederacy, and agreement so as aforesaid had, they the said A. B. &c. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, with force and arms, did unlawfully, riotously, and routously assemble and meet together, near to the said dwelling house and premises of the said C. D. and near to the dwelling houses and premises of divers other liege subjects of our said lord the king, there, and being so assembled and met together, then and there unlawfully, riotously, and routously did make a great noise, riot, disturbance and affray, and staid and continued there making such noise, riot, disturbance and affray, for a long time, to wit, &c. for the space of five hours, and thereby for and during all that time, there greatly disturbed, disquieted,

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(j) From the MS. of a gentle- East, 231. As to forcible en-  
man at the bar, quære see 13 tries, see ante 1120 to 1123.



terrified and alarmed the said C. D. and his wife and family in the peaceable possession and enjoyment of his said dwelling house and premises, and also greatly disturbed, disquieted, terrified, and alarmed the said other liege subjects of our said lord the king, inhabiting and residing in the said dwelling house and premises, and then and there unlawfully, riotously, and routously did break down, pull down, prostrate, demolish, and destroy great part of the said wall, &c. &c. to wit, twenty perches of the said wall, then and there standing and being, and the materials thereof, to wit, five hundred bricks, &c. &c. of a large value, to wit, &c. unlawfully, riotously, routously, and wantonly, did cast and scatter into and about the king's common and public highway there, to the great damage and terror of the said, &c. and of his majesty's other liege subjects, in contempt, &c. to the evil example, &c. and against the peace, &c. And <sup>Second</sup> the jurors, &c. do further present, that the said A. B. &c. <sup>count.</sup> together with divers other evil disposed persons, to the jurors aforesaid as yet unknown, heretofore, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully conspire, combine, confederate and agree together, unlawfully to break down, demolish, prostrate and destroy, certain other erections, buildings, posts, pales, rails, and fences, there, then standing and being the property of and belonging to his said majesty's subjects, there, then inhabiting and residing, in contempt, &c. to the evil, &c. and against the peace, &c. And the jurors, &c. do further present, that the <sup>Third</sup> said\* A. B. &c. together with divers other evil disposed persons, to the jurors aforesaid as yet unknown, being <sup>per-count.</sup> respectively rioters, routers, and disturbers of the peace of our said lord the king, heretofore, to wit, on, &c. aforesaid, with force and arms, at, &c. aforesaid, did unlawfully, riotously, and routously assemble and meet together, to disturb the peace of our said lord the king, near the dwelling houses of divers other liege subjects of our said lord the king, and being so assembled and met together there, then and there, unlawfully, riotously, and routously did make a great noise, disturbance and affray, and staid and continued there making such riot, noise, disturbance and affray for a long space of time, to wit, &c. and thereby for and during all that time, there greatly disturb, disquieted, terrified, and alarmed the said last mentioned subjects, in the peaceable possession, use, occupation, and enjoyment of their said dwelling houses, and then and there unlawfully, riotously, and routously did break down, pull down, prostrate, demolish, and destroy great part, to wit, twenty perches of a certain other wall, and certain other erections, buildings, posts, pales, rails, and fences, to wit, twenty other erections, &c. of the said C. D. there

then standing and being, and the materials thereof, containing divers, to wit, five hundred other bricks, &c. of the said C. D. of a large value, to wit, &c. unlawfully, riotously, routously, and wantonly, did cast and scatter into and about the said common and public highway there, to the great damage and terror of the said C. D. and his majesty's other liege subjects, in contempt, &c. to the evil, &c. and against the peace, &c. [*Fourth count for a riot, omitting the conspiring.*]

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